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OSHA's Proposed New Interpretation of Occupational Noise Standards Could Dramatically Increase the Obligations of Employers

On October 19, 2010, the Occupational Safety and Health Administration (OSHA) published notice in the *Federal Register* of its proposed interpretation of the term “feasible administrative or engineering controls” as used in the general industry and construction industry noise standards (29 CFR 1910.95 and 1926.52) and its intent to modify its current enforcement policy in accordance with the interpretation.

Under the virtually identical general industry and construction industry noise standards, employers must use administrative or engineering controls rather than personal protective equipment (PPE) to reduce noise exposures that are above permissible levels when such controls are feasible. OSHA's current enforcement policy (in effect since 1983) allows employers to rely on a combination of feasible administrative controls and PPE if such a program reduces exposure to excessive levels of noise and is less expensive than administrative and engineering controls. Under OSHA's current enforcement policy, citations are issued for failure to use engineering and administrative controls only when they cost less than a hearing conservation program or the PPE is ineffective.

OSHA proposes to interpret the word “feasible” to mean “achievable” or “capable of being done.” OSHA seeks to clarify that PPE such as ear plugs and ear muffs, will no longer be sufficient and could only be used as supplements when administrative or engineering controls are not completely effective. Under the proposed interpretation, employers would be required to implement feasible administrative or engineering controls, unless doing so would be so cost prohibitive that it would threaten an employer's ability to remain in business. Administrative controls would include restructuring and reorganization of employees' work assignments to reduce exposure to noise. Engineering controls may also require modifications to the work environment, including equipment, processes or materials to reduce intensity of the noise at its source.

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According to the proposed interpretation, the current enforcement policy is contrary to the plain language of the standards and “thwarts the safety and health purposes of the OSH Act by rarely requiring administrative and engineering controls even though these controls are generally more effective than hearing protectors in reducing noise exposure.” OSHA, now proposes “to consider administrative or engineering controls economically feasible under the noise standards when the cost of these controls will not threaten the cited employer’s ability to stay in business or when the threat to viability results from the employer’s having lagged behind the industry in providing safety and health protection for employees.”

The impact of the proposed interpretation, if adopted, will require employers to implement potentially costly modifications to their facilities or equipment or employee work assignments despite the effectiveness of any current hearing conservation measures.

Comments on the proposed interpretation may be submitted to OSHA by December 20, 2010.

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