

OSHA'S PROPOSED CHANGES TO NOISE CONTROL STANDARDS

OVERVIEW

The Occupational Safety and Health Administration (OSHA) issued a notice on October 19, 2010 announcing its intention to change its official interpretation of workplace noise exposure standards and enforcement.

Currently, OSHA regulates the acceptable levels of noise to which employees are exposed in the workplace. To protect employees against hearing loss, the Agency has maintained a decades-old policy that allows employers to provide "personal protective equipment" such as ear plugs and ear muffs as well as engineering controls like noise-dampening equipment and muffling systems to effectively supplement their operating practices. OSHA's common-sense approach held that it was permissible for employers to adopt these practices when they were effective.

However, OSHA now plans to abandon this practice. In its notice, the Agency announces a goal of requiring employers to implement all "feasible" controls – with "feasible" meaning "capable of being done" – regardless of the costs or effectiveness of currently-used personal protective equipment. According to the notice, these changes must be adopted regardless of the costs unless an employer can prove that making such changes will "put them out of business" or severely threaten the company's "viability." In addition, the only justification for the changes provided by the OSHA notification was the realignment of the Agency's policy of effective noise abatement based on certain legal interpretations.

To be clear, this proposal is not a proposed regulation or standard and it does not lower the threshold for employee noise exposure. However, this proposal is a change to a long-held OSHA policy. The Agency has requested public comments on the proposal before December 20, 2010.

IMPACT ON MANUFACTURERS

If the Agency implements the proposal, employers that have not made every systematic change "capable of being done" will have to make sweeping changes to their workplaces, including:

- Developing new workplace practices, procedures and work schedules;
- Installing new equipment such as baffles and other sound containment devices; and
- Retrofitting machines and production systems with often expensive noise-dampening controls.

These changes would be required even if effective mechanisms are already in place to protect employees from loud noises. Unfortunately, this proposal will force manufacturers to divert additional resources away from job creation, investment and expansion.

OSHA has indicated that it intends to enforce this new interpretation by issuing citations for employers found in non-compliance. Unless employers can prove to OSHA inspection officers that the changes will be economically devastating or are impossible to make, businesses will be forced to implement them, which will be particularly costly and burdensome for smaller-sized manufacturers.

NAM ACTION

The National Association of Manufacturers (NAM) continues to analyze the impact of this proposal on manufacturers, including the costs of compliance. We continue to work with manufacturers as we prepare our response to OSHA's proposal. In the meantime, we encourage manufacturers to contact their member of Congress to voice their opposition to this costly regulatory proposal.

For more information, visit www.nam.org or contact the NAM's Director of Employment and Labor Policy Keith Smith at (202) 637-3045 or ksmith@nam.org.

