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OSHA Revises Its Hazard Communication to Adopt GHS

On March 20, OSHA released its revised Hazard Communication Standard, aligning it with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS). This update to the Hazard Communication Standard (HCS) will provide a common and coherent approach to classifying chemicals and communicating hazard information on labels and safety data sheets. Once implemented, the revised standard will improve the quality and consistency of hazard information in the workplace, making it safer for workers by providing easily understandable information on appropriate handling and safe use of hazardous chemicals.

First established in 1983 and then extended to all industries in 1987, the HCS was one of the first standards to require a written program. The HCS is one of the most frequently cited general industry OSHA standards. If compliance efforts are not documented in a written program, employers will be subject to fines up to $7,000 per violation. The Hazard Communication Standard in 1983 gave the workers the "right to know," but the new Globally Harmonized System gives workers the "right to understand."

According to the OSHA news release, the new standard will prevent an estimated 43 deaths in the U.S. each year, result in an estimated $475.2 million in enhanced productivity for U.S. businesses each year and prevent an estimated 585 injuries and illnesses annually.

Many countries already have regulatory systems in place for these types of requirements. These systems may be similar in content and approach, but their differences are significant enough to require multiple classifications, labels and safety data sheets for the same product when marketed in different countries, or even in the same country when parts of the life cycle are covered by different regulatory authorities. This leads to inconsistent protection for those potentially exposed to the chemicals, as well as creating extensive regulatory burdens on companies producing chemicals. For example, in the United States, there are requirements for classification and labelling of chemicals for the Consumer Product Safety Commission, the Department of Transportation, the Environmental Protection Agency, and the Occupational Safety and Health Administration.

The GHS itself is not a regulation or a standard. The GHS Document (referred to as "The Purple Book") establishes agreed hazard classification and communication provisions with explanatory information on how to apply the system. The elements in the GHS supply a mechanism to meet the basic requirement of any hazard communication system, which is to decide if the chemical product produced and/or supplied is hazardous and to prepare a label and/or Safety Data Sheet as appropriate.

The primary impact of revising the HCS to adopt the GHS is compliance obligations for producers of hazardous chemicals. The modifications to the HCS involve a review of the classifications of these chemicals, as well as preparation and distribution of new labels and revised safety data sheets. Employers who use chemicals, and exposed employees, benefit from receiving the revised labels and safety data sheets prepared in a consistent format. The information should be easier to comprehend and access in the new approach,

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OSHA Elevates Enforcement of Whistleblower Protections

In keeping with OSHA's plan to elevate its enforcement of the 21 different whistleblower statues it has jurisdiction over, OSHA recently issued a memorandum offering guidance to both field compliance officers and whistleblower investigative staff on several employer practices that can discourage employee reports of injuries. Employers who practice such discouragement violate section 11(c) of the Occupational Safety and Health Act of 1970 (OSH Act). This section of the OSH Act prohibits employers from discriminating against any employee who exercises their right to report injuries or illnesses in the workplace, or any other right afforded by the Act.

OSHA's Deputy Assistant Secretary, Richard Fairfax, stressed in the memorandum that "reporting a work-related injury or illness is a core employee right, and retaliating against a worker for reporting an injury or illness is illegal discrimination under section 11(c)." Mr. Fairfax continued to caution that "if employees do not feel free to report injuries or illnesses, the employer's entire workforce is put at risk. Employers do not learn of and correct dangerous conditions that have resulted in injuries, and injured employees may not receive the proper medical attention, or the workers' compensation benefits to which they are entitled. Ensuring that employees can report injuries or illnesses without fear of retaliation is therefore crucial to protecting worker safety and health."

OSHA has observed several types of workplace policies and practices that could discourage the reporting of injuries and illness, which could in turn constitute unlawful discrimination and a violation of section 11(c). Some of the most common potentially discriminatory policies observed by OSHA are highlighted below:

1. OSHA has received reports of employers who have a policy of taking disciplinary action against employees who are injured on the job, regardless of the circumstances surrounding the injury. However, reporting an injury is always a protected activity, as OSHA views discipline imposed against an employee who reports an injury as a direct violation of section 11(c).
2. In another situation, an employee who reports an injury or illness is disciplined, and the reason given is that the employee has violated an employer rule about the time or manner for reporting such an injury or illness. Such cases deserve careful scrutiny, because if the simple act of reporting the injury directly results in disciplinary measures from the employer, there is a clear potential for violating section 11(c).
3. In a third situation, an employee reports an injury, and the employer imposes discipline on the grounds that the injury resulted from the violation of a safety rule by the employee. OSHA encourages employers to maintain and enforce legitimate workplace safety rules in order to eliminate or reduce workplace hazards and prevent injuries from occurring in the first place. In some cases, however, an employer may attempt to use a work rule as a pretext for discrimination against a worker who reports an injury. Vague rules, such as a requirement that employees "maintain situational awareness" or "work carefully" may be manipulated and used as a pretext for unlawful discrimination. Enforcing a rule more stringently against injured employees than non-injured employees may suggest that the rule is a pretext for discrimination against an injured employee in violation of section 11(c).
4. Finally, some employers establish programs that unintentionally or intentionally provide employees an incentive to not report injuries. For example, an employer might enter all employees who have not been injured in the previous year in a drawing to win a prize, or a team of employees might be awarded a bonus if no one from the team is injured over some period of time. Such programs might be well-intentioned efforts by employers to encourage their workers to use safe practices. However, OSHA suggests better ways to encourage safe work practices, such as incentives that promote worker participation in safety-related activities. OSHA's Voluntary Protection Program (VPP) offers guidance materials that refer to a number of positive incentives, including providing tee shirts to workers serving on safety and health committees; offering modest rewards for suggesting ways to strengthen safety and health; or, throwing a recognition party at the successful completion of company-wide safety and health training.

Since OSHA can't be everywhere at once, they depend on workers to speak up when they see a hazard at work. To make sure that workers have this voice, OSHA continues to strengthen their Whistleblower Protection Program by issuing a new investigation manual, launching important pilot programs, and streamlining its complaint process to be directly reported to its Office of the Whistleblower Protection Program (OWPP). Finally, the Department of Labor's proposed budget request for FY13 includes a $5 million increase in OSHA's funding for whistleblower enforcement. ◆

Safety Compliance Monitor newsletters are intended to provide you with additional guidance on labor laws and OSHA regulations to help turn you into informed employers and keep you in compliance with the latest labor laws. If you have any employment-related topics that you would like to see covered in future newsletters articles, please send your ideas to answers@personnelconcepts.com.
While all submissions will be taken into consideration, we will publish those that are most applicable to the majority of our client base and employers in general.

FAQ: Hazard Communication Standard and the GHS

Q. What is the Globally Harmonized System?

A. The Globally Harmonized System (GHS) is an international approach to hazard communication, providing agreed criteria for classification of chemical hazards, and a standardized approach to label elements and safety data sheets.

Q. Why did OSHA decide to modify the Hazard Communication Standard to adopt the GHS?

A. The GHS provides such a standardized approach, including detailed criteria for determining what hazardous effects a chemical poses, as well as standardized label elements assigned by hazard class and category. This will enhance both employer and worker comprehension of the hazards, which will help to ensure appropriate handling and safe use of workplace chemicals. In addition, the safety data sheet requirements establish an order of information that is standardized. The harmonized format of the safety data sheets will enable employers, workers, health professionals, and emergency responders to access the information more efficiently and effectively, thus increasing their utility.

Q. What is the phase-in period in the revised Hazard Communication Standard?

A. Employer Effective Dates:

By December 1, 2013, must train their employees on the new label elements and safety data sheet (SDS) format.

By June 1, 2016, update alternative workplace labeling and hazard communication program as necessary, and provide additional employee training for newly identified physical or health hazards.

During the phase-in period, employers would be required to be in compliance with either the existing HCS or the revised HCS, or both.

Chemical manufacturers, importers, distributors and employers Effective Dates:

By June 1, 2015, compliance with all modified provisions of the final rule, except that Distributors have until December 1, 2015 until they are required to only ship containers labeled by the chemical manufacturer or importer that have a GHS label.

Q. Why must training be conducted prior to the compliance effective date?

A. While many countries are in various stages of implementing the GHS, OSHA believes that it is possible that American workplaces may begin to receive labels and SDSs that are consistent with the GHS shortly after publication. Thus, making it important to ensure that when employees begin to see the new labels and SDSs in their workplaces, they will be familiar with them, understand how to use them, and access the information effectively.

Q. What are the major changes to the Hazard Communication Standard?

A. The three major areas of change are in hazard classification, labels, and safety data sheets:

- Hazard classification: The definitions of hazard have been changed to provide specific criteria for classification of health and physical hazards, as well as classification of mixtures. These specific criteria will help to ensure that evaluations of hazardous effects are consistent across manufacturers, and that labels and safety data sheets are more accurate as a result.
- Labels: Chemical manufacturers and importers will be required to provide a label that includes a harmonized signal word, pictogram, and hazard statement

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OSHA Doubles Penalty Amounts for Serious Violations

The average proposed penalty amount for an OSHA "serious" safety violation more than doubled last year, supporting recent increases in enforcement from the Occupational Safety and Health Administration (OSHA). The average serious violation penalty in 2011 was $2,132, a 102 percent increase from the prior year average of $1,053. According to OSHA, a "serious violation" occurs when there is substantial probability that serious physical harm or death could result from a hazard about which the employer knew or should have known.

However, even with the increase, OSHA's Assistant Secretary of Labor, Dr. David Michaels, believes that the penalties are still too small. "For many employers, investing in job safety happens only when they have adequate incentives to comply with OSHA's requirements," said Dr. Michaels. "Higher penalties and more aggressive, targeted enforcement will provide a greater deterrent and further encourage these employers to furnish safe and healthy workplaces for their employees."

The increase in penalty amounts for serious violations comes as a result of OSHA's latest penalty structure, which reduces the size of penalty reductions that employers can become eligible for due to their number of workers, safety records, and other factors. Furthermore, when OSHA finds egregious cases, or situations determined to be imminently hazardous, the agency gives their investigators the authority to penalize each suspected infraction instead of grouping them together. Such was the case in a recent fine of over $1 million against a Midwest facility that allowed unprotected and untrained workers to remove asbestos-containing materials from its location.

OSHA justifies their enforcement efforts by highlighting that "tens of thousands die from workplace disease and more than 4.6 million workers are seriously injured on the job annually." Employers who comply with OSHA's guidelines do their part to quell this trend by furnishing safe and healthy workplaces for their employees. ◆

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allowing it to be used more effectively for the protection of employees. The primary change in workplaces where chemicals are used but not produced will be to integrate the new approach into the workplace hazard communication program, including assuring that both the employers and employees understand the pictograms and other information provided on the chemicals.

By December 1, 2013, employers are required to train employees on the new label elements and safety data sheet format to facilitate recognition and understanding. Effective June 1, 2016, employers are required to update alternative workplace labeling and hazard communication programs as necessary, and provide additional employee training for newly identified physical or health hazards. During the transition period to the effective completion dates noted in the standard, chemical manufacturers, importers, distributors and employers may comply with either 29 Code of Federal Regulations 1910.1200 (the final standard), the current standard or both. ◆

FAQ Continued from page 3.

for each hazard class and category. Precautionary statements must also be provided.

- Safety Data Sheets: Will now have a specified 16-section format.

Q. How will labels change under the revised Hazard Communication Standard?

A. Under the current Hazard Communication Standard (HCS), the label preparer must provide the identity of the chemical, and the appropriate hazard warnings. This may be done in a variety of ways, and the method to convey the information is left to the preparer. Under the revised HCS, once the hazard classification is completed, the standard specifies what information is to be provided for each hazard class and category. Labels will require the following elements:

- Pictogram: a symbol plus other graphic elements, such as a border, background pattern, or color that is intended to convey specific information about the hazards of a chemical. Each pictogram consists of a different symbol on a white background within a red square frame set on a point (i.e. a red diamond). There are nine pictograms under the GHS. However, only eight pictograms are required under the HCS.
- Signal words: a single word used to indicate the relative level of severity of hazard and alert the reader to a potential hazard on the label. The signal words used are "danger" and "warning." "Danger" is used for the more severe hazards, while "warning" is used for less severe hazards.
- Hazard Statement: a statement assigned to a hazard class and category that describes the nature of the hazard(s) of a chemical, including, where appropriate, the degree of hazard.
- Precautionary Statement: a phrase that describes recommended measures to be taken to minimize or prevent adverse effects resulting from exposure to a hazardous chemical, or improper storage or handling of a hazardous chemical.

Q. How is the Safety Data Sheet (SDS) changing under the revised Hazard Communication Standard?

A. The information required on the safety data sheet (SDS) will remain essentially the same as that in the current standard. The final rule indicates the headings of information to be included on the SDS and the order in which they are to be provided. In addition, Appendix D indicates what information is to be included under each heading.

The format of the 16-section SDS should include the following sections:

Section 1. Identification
Section 2. Hazard(s) identification
Section 3. Composition/ information on ingredients
Section 4. First-Aid measures
Section 5. Fire-fighting measures
Section 6. Accidental release measures
Section 7. Handling and storage
Section 8. Exposure controls/ personal protection
Section 9. Physical and chemical properties
Section 10. Stability and reactivity
Section 11. Toxicological information
Section 12. Ecological information
Section 13. Disposal considerations
Section 14. Transport information
Section 15. Regulatory information
Section 16. Other information, including date of preparation or last revision

Sections 12-15 may be included in the SDS, but are not required by OSHA. ◆

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