

OSHA Moves Forward on Sweeping Silica Rule

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On March 24, 2016, the Occupational Safety and Health Administration (OSHA) issued a final rule to curb lung cancer, silicosis, chronic obstructive pulmonary disease, and kidney disease in America's workers by limiting their exposure to respirable crystalline silica. Expected to save over 600 lives and prevent more than 900 new cases of silicosis each year, the rule reduces the permissible exposure limits (PELs) for approximately 2.3 million people in the U.S. who are exposed to the dangerous silica dust that is common in many industries.

First Revision to Silica Standards in Over Forty Years

Crystalline silica is a mineral that is a component of sand, rock, concrete, brick, mortar, and other common materials. It exists in many work environments, but exposure is particularly great in operations involving construction tasks, such as cutting, drilling, and crushing concrete or rocks, or in operations using sand products, such as hydraulic fracturing, glass manufacturing, foundries, and sand blasting.

PELs for silica were established more than 40 years ago. The new rule requires employers in affected industries to implement controls and work practices that are intended to reduce employees' exposure to the deadly dust particles. Although OSHA issued two standards – one for the construction industry and another for general industry and maritime employers – certain key provisions appear in both standards, including:

- Reducing the PELs for respirable crystalline silica to 50 micrograms per cubic meter of air, averaged over an 8-hour shift
- Requiring employers to use engineering controls and practices to keep worker exposure at or below the PELs, such as wetting down work operations, using vacuums to keep silica dust out of the air, and limiting worker access to high exposure areas (note: providing respirators is only allowed when engineering controls cannot adequately limit exposure)
- Requiring employers to develop a written exposure control plan, offer medical exams to highly exposed workers, and train workers on silica risks and how to limit exposures
- Mandating that employers keep records of workers' silica exposure and medical exams
- Providing flexibility to help employers — especially small businesses — protect workers from silica exposure by offering compliance alternatives.

Affected Industries

OSHA lists the primary industries affected by the final crystalline silica rule to include construction, oil and gas operations, railroad transportation, concrete products, foundries, dental laboratories, ready-mix concrete, glass manufacturing, paintings and coatings, refractory products, abrasive blasting, and other similar industries. OSHA estimates that approximately 676,000 workplaces will be affected.

State OSHA-Approved Programs

Within six months, states with OSHA-approved state plans must adopt silica standards that are at least as effective as the federal OSHA standards. Although many state plans adopt standards that are identical to the federal standards, states have the option of implementing even more stringent requirements designed to achieve the goal of limiting workers' exposure to silica dust.

Compliance Schedule

Although both standards published in the final rule take effect in just three months on June 23, 2016, affected industries have one to five years to comply with most requirements. For the construction industry, employers must comply with all obligations of the standard, except methods of sample analysis, by June 23, 2017, one year after the effective date. The deadline to comply with methods of sample analysis is extended by an additional year to June 23, 2018.

For general industry and maritime, employers, except hydraulic fracturing operations, have two years after the effective date to comply with the obligations of the standard, or until June 23, 2018, with the exception of offering medical examinations, which has a longer compliance deadline.

For hydraulic fracturing operations, employers are required to comply with all obligations of the standard, except for engineering controls, medical surveillance and offering medical examinations, by June 23, 2018, two years after the effective date. Extended compliance deadlines exist for engineering controls, pushing the deadline out to 2021, because controls for respirable crystalline silica in hydraulic fracturing are still in development.

OSHA has significant additional information on the final silica rule available on its website, including fact sheets and frequently asked questions. If you are in an affected industry, you need to take action now to meet the compliance deadlines. For additional information, please contact the Holland & Hart attorney with whom you usually work or the authors of this update.

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