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OSHA WITHDRAWS PROPOSED TUBERCULOSIS RULE, REVOKES "INTERIM" RESPIRATOR STANDARD FOR TB: GENERAL RESPIRATORY PROTECTION RULE TAKES OVER

On December 30, 2003, the Occupational Safety and Health Administration ("OSHA") of the U.S. Department of Labor announced its withdrawal of its proposed occupational exposure to tuberculosis ("TB") rule. Henceforth, it will apply the general industry respiratory protection standard to TB.

On a world-wide basis, TB causes almost three million deaths per year, more than any other infectious agent. Moreover, nearly one-third of the world's population is infected with TB. In the mid-1980's, a resurgence of TB outbreaks in the U.S. and the existence of drug-resistant TB strains caused both the Centers for Disease Control ("CDC") of the U.S. Department of Health and Human Services and OSHA to focus on the disease.

In 1989, the CDC released "A Strategic Plan for the Elimination of Tuberculosis in the United States," and it published numerous other TB-related guidelines in the 1990s. On October 17, 1997, OSHA proposed a TB rule to protect approximately 5.3 million employees in more than 100,000 workplaces where there was a significant risk of TB exposure (for example, hospitals and nursing homes). In 1998, when OSHA promulgated a general industry respiratory protection standard, it deferred a decision on whether to apply the new general industry respiratory

protection standard to workers exposed to TB until after the TB-specific-rulemaking (which contained a comprehensive respiratory protection provision) concluded. OSHA also redesignated its old respiratory protection standard in a new section, "Respiratory Protection for M. tuberculosis," which would apply only while the TB rulemaking was pending.

However, thanks to CDC's efforts, U.S. TB cases have dropped 40% . In response, OSHA recently decided that finalizing its proposed TB rule would not significantly reduce the chance of catching TB from an undiagnosed source. OSHA Administrator John Henshaw announced:

Given these positive results, it's appropriate to let CDC continue the successful work it is doing and focus our resources on reducing workplace hazards that are not being addressed through other control efforts. In addition, based on our extensive review of the issues related to respiratory protection, workers exposed to tuberculosis should have the same protections as those exposed to other types of hazards in the workplace.

OSHA then withdrew its proposed TB standard and revoked its "Respiratory protection for M. tuberculosis," standard. OSHA now will apply 29 CFR section 1910.134 (the general industry respiratory protection standard) to ensure TB control.

The revised general industry standard's requirements include:

- Updating respirator programs to implement a systematic approach to evaluating workplace conditions, selecting the appropriate respirator and ensuring the proper fit and maintenance.
- Complying with minimum medical evaluation requirements to determine if employees are medically qualified to wear respirators.
- Fit testing respirators annually to ensure that there are no gaps through which contaminated air can enter the employee's breathing zone.
- Providing comprehensive, understandable and annual

- training to employees who must use respirators.
- Keeping accurate and up-to-date records.

To ensure that the fight against TB continues to be successful, and to protect themselves from potential liability, all employers whose workplaces pose a significant risk of TB exposure should make certain they comply with OSHA's respiratory protection standard and follow the CDC's guidelines.

OSHA Practice Group E-Newsletter is an electronic publication of the law firm of Reinhart Boerner Van Deuren s.c. and is prepared by attorneys in its OSHA Practice Group. This publication is intended to afford timely notice to our clients and friends of current events in OSHA regulations and to provide general information about OSHA issues. It is not intended, nor should it be used, as a substitute for specific legal advice regarding particular factual situations.

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