

DRAFT PROPOSED SAFETY AND HEALTH PROGRAM RULE

29 CFR 1900.1

Docket No. S&H-0027

What is the purpose of this rule? The purpose of this rule is to reduce the number of job-related fatalities, illnesses, and injuries. The rule will accomplish this by requiring employers to establish a workplace safety and health program to ensure compliance with OSHA standards and the General Duty Clause of the Act (Section 5(a)(1)).

(a) Scope.

(a)(1) Who is covered by this rule? All employers covered by the Act, except employers engaged in construction and agriculture, are covered by this rule.

(a)(2) To what hazards does this rule apply? This rule applies to hazards covered by the General Duty Clause and by OSHA standards.

(b) Basic obligation.

(b)(1) What are the employer's basic obligations under the rule? Each employer must set up a safety and health program to manage workplace safety and health to reduce injuries, illnesses and fatalities by systematically achieving compliance with OSHA standards and the General Duty Clause. The program must be appropriate to conditions in the workplace, such as the hazards to which employees are exposed and the number of employees there.

(b)(2) What core elements must the program have? The program must have the following core elements:

- (i) Management leadership and employee participation;
- (ii) Hazard identification and assessment;
- (iii) Hazard prevention and control;
- (iv) Information and training; and
- (v) Evaluation of program effectiveness.

(b)(3) Does the rule have a grandfather clause? Yes. Employers who have implemented a safety and health program before the effective date of this rule may continue to implement that program if:

- (i) The program satisfies the basic obligation for each core element; and
- (ii) The employer can demonstrate the effectiveness of any provision of the employer's program that differs from the other requirements included under the core elements of this rule.

(c) Management leadership and employee participation.

(c)(1) Management leadership.

(c)(1)(i) What is the employer's basic obligation? The employer must demonstrate management leadership of the safety and health program.

(c)(1)(ii) What must an employer do to demonstrate management leadership of the program? An

employer must:

(A) Establish the program responsibilities of managers, supervisors, and employees for safety and health in the workplace and hold them accountable for carrying out those responsibilities;

(B) Provide managers, supervisors, and employees with the authority, access to relevant information, training, and resources they need to carry out their safety and health responsibilities; and

(C) Identify at least one manager, supervisor, or employee to receive and respond to reports about workplace safety and health conditions and, where appropriate, to initiate corrective action.

(c)(2) Employee participation.

(c)(2)(i) What is the employer's basic obligation? The employer must provide employees with opportunities for participation in establishing, implementing, and evaluating the program.

(c)(2)(ii) What must the employer do to ensure that employees have opportunities for participation? The employer must:

(A) Regularly communicate with employees about workplace safety and health matters;

(B) Provide employees with access to information relevant to the program;

(C) Provide ways for employees to become involved in hazard identification and assessment, prioritizing hazards, training, and program evaluation;

(D) Establish a way for employees to report job-related fatalities, injuries, illnesses, incidents, and hazards promptly and to make recommendations about appropriate ways to control those hazards; and

(E) Provide prompt responses to such reports and recommendations.

(c)(2)(iii) What must the employer do to safeguard employee participation in the program? The employer must not discourage employees from making reports and recommendations about fatalities, injuries, illnesses, incidents, or hazards in the workplace, or from otherwise participating in the workplace safety and health program.

Note: In carrying out this paragraph (c)(2), the employer must comply with the National Labor Relations Act.

(d) Hazard identification and assessment.

(d)(1) What is the employer's basic obligation? The employer must systematically identify and assess hazards to which employees are exposed and assess compliance with the General Duty Clause and OSHA standards.

(d)(2) What must the employer do to systematically identify and assess hazards and assess compliance? The employer must:

(i) Conduct inspections of the workplace;

(ii) Review safety and health information;

(iii) Evaluate new equipment, materials, and processes for hazards before they are introduced into the workplace; and

(iv) Assess the severity of identified hazards and rank those that cannot be corrected immediately according to

their severity.

Note: Some OSHA standards impose additional, more specific requirements for hazard identification and assessment. This rule does not displace those requirements.

(d)(3) How often must the employer carry out the hazard identification and assessment process? The employer must carry it out:

(i) Initially;

(ii) As often thereafter as necessary to ensure compliance with the General Duty Clause and OSHA standards and at least every two years; and

(iii) When safety and health information or a change in workplace conditions indicates that a new or increased hazard may be present.

(d)(4) When must the employer investigate safety and health events in the workplace? The employer must investigate each work-related death, serious injury or illness, or incident (near-miss) having the potential to cause death or serious physical harm.

(d)(5) What records of safety and health program activities must the employer keep? The employer must keep records of the hazards identified and their assessment and the actions the employer has taken or plans to take to control those hazards.

Exemption: Employers with fewer than 10 employees are exempt from the recordkeeping requirements of this rule.

(e) Hazard prevention and control.

(e)(1) What is the employer's basic obligation? The employer's basic obligation is to systematically comply with the hazard prevention and control requirements of the General Duty Clause and OSHA standards.

(e)(2) If it is not possible for the employer to comply immediately, what must the employer do? The employer must develop a plan for coming into compliance as promptly as possible, which includes setting priorities and deadlines and tracking progress in controlling hazards.

Note: Any hazard identified by the employer's hazard identification and assessment process that is covered by an OSHA standard or the General Duty Clause must be controlled as required by that standard or that clause, as appropriate.

(f) Information and training.

(f)(1) What is the employer's basic obligation? The employer must ensure that:

(i) Each employee is provided with information and training in the safety and health program; and

(ii) Each employee exposed to a hazard is provided with information and training in that hazard.

Note: Some OSHA standards impose additional, more specific requirements for information and training. This rule does not displace those requirements.

(f)(2) What information and training must the employer provide to exposed employees? The employer must provide information and training in the following subjects:

(i) The nature of the hazards to which the employee is exposed and how to recognize them;

(ii) What is being done to control these hazards;
(iii) What protective measures the employee must follow to prevent or minimize exposure to these hazards;
and

(iv) The provisions of applicable standards.

(f)(3) When must the employer provide the information and training required by this rule? (f)(3)(i) The employer must provide initial information and training as follows:

(A) For current employees, before the compliance date specified in paragraph (i) for this paragraph (f); and

(B) For new employees, before initial assignment to a job involving exposure to a hazard.

Note: The employer is not required to provide initial information and training in any subject in paragraph (f)(2) for which the employer can demonstrate that the employee has already been adequately trained.

(f)(3)(ii) The employer must provide periodic information and training:

(A) As often as necessary to ensure that employees are adequately informed and trained; and

(B) When safety and health information or a change in workplace conditions indicates that a new or increased hazard exists.

(f)(4) What training must the employer provide to employees who have program responsibilities? The employer must provide all employees who have program responsibilities with the information and training necessary for them to carry out their safety and health responsibilities.

(g) Evaluation of program effectiveness.

(g)(1) What is the employer's basic obligation? The employer's basic obligation is to evaluate the safety and health program to ensure that it is effective and appropriate to workplace conditions.

(g)(2) How often must the employer evaluate the effectiveness of the program? The employer must evaluate the effectiveness of the program:

(i) As often as necessary to ensure program effectiveness;

(ii) At least once within the 12 months following the final compliance date specified in paragraph (i); and

(iv) Thereafter at least once every two years.

(g)(3) When is the employer required to revise the program? The employer must revise the program in a timely manner to correct deficiencies identified by the program evaluation.

(h) Multi-employer workplaces.

(h)(1) What are the host employer's responsibilities? The host employer's responsibilities are to:

(i) Provide information about hazards, controls, safety and health rules, and emergency procedures to all employers at the workplace; and

(ii) Ensure that safety and health responsibilities are assigned as appropriate to other employers at the workplace.

(h)(2) What are the responsibilities of the contract employer? The responsibilities of a contract employer

are to:

(i) Ensure that the host employer is aware of the hazards associated with the contract employer's work and what the contract employer is doing to address them; and

(ii) Advise the host employer of any previously unidentified hazards that the contract employer identifies at the workplace.

(i) Dates.

(i)(1) What is the effective date for this rule? The effective date for this rule is [insert date 90 days from the date of publication in the Federal Register].

(i)(2) When must the employer be in compliance with the requirements of this rule?

(i)(2)(i) Employers with fewer than 10 employees must comply with the requirements of paragraphs (c), (f), and (h) by [insert date 18 months after the effective date], and with paragraphs (d), (e), and (g) by [insert date 36 months after the effective date].

(i)(2)(ii) Employers with 10 employees or more must comply with the requirements in paragraphs (c), (f), and (h) by [insert date 9 months after the effective date], and with paragraphs (d), (e), and (g) by [insert date 18 months after the effective date].

(j) Definitions.

Control means to reduce exposure to hazards in accordance with the General Duty Clause or OSHA standards, including providing appropriate supplemental and/or interim protection, as necessary, to exposed employees. Prevention and elimination are the best forms of control.

Contract employer is an employer who performs work for a host employer at the host employer's workplace. A contract employer does not include an employer who provides incidental services that do not influence the workplace safety and health program, whose employees are only incidentally exposed to hazards at the host employer's workplace (e.g., food and drink services, delivery services, or other supply services).

Employee means all persons who are considered employees under the OSH Act, including temporary, seasonal, and "leased" employees.

Employer means all persons who are considered employers under the OSH Act.

Exposure (exposed) means that an employee in the course of employment is reasonably likely to be subjected to a hazard.

General Duty Clause means the General Duty Clause of the OSH Act, Section 5(a)(1), which states that "each employer...shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

Host employer means an employer who controls conditions at a multi-employer worksite.

Multi-employer worksite means a workplace where there is a host employer and at least one contract employer.

Program means procedures, methods, processes, and practices that are part of the management system at the workplace.

Safety and health information means the establishment's fatality, injury, and illness experience, OSHA 200 logs, workers' compensation claims, nurses' logs, the results of any medical screening/surveillance, employee safety and health complaints and reports, environmental and biological exposure data, information from prior workplace safety and health inspections, Materials Safety Data Sheets (MSDSs), the results of employee symptom surveys, safety manuals and health and safety warnings provided to the employer by equipment manufacturers and chemical suppliers, information about occupational safety and health provided to the employer by trade associations or professional safety or health organizations, and the results of prior accident and incident investigations at the workplace.

Severity means the likelihood of employee exposure, the seriousness of harm associated with the exposure, and the number of exposed employees.