Standard Interpretations

08/29/2007 - Clarification of 1910.95 and 1904 regarding physicians and audiologists roles in determining work-relatedness of worker hearing loss.

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- **Standard Number:** 1904; 1904.5; 1904.5(b)(2); 1904.10(b)(5); 1904.10(b)(6); 1910.95; 1910.95(c); 1910.95(d); 1910.95(e); 1910.95(g)(1); 1910.95(g)(8); 1910.95(g)(8)(ii); 1910.95(g)(10)

August 29, 2007

Theresa Y. Schulz, PhD
VA Medical Center, James H. Quillen
P.O. Box 344
Fall Branch, TN 37656

Dear Dr. Schulz:

Thank you for your November 30, 2005 letter to the Occupational Safety and Health Administration (OSHA) concerning the Injury and Illness Recording and Reporting Requirements contained in 29 CFR Part 1904. Please accept my apology for the delay in our response. Your letter requested guidance related to what you saw as a conflict between 29 CFR 1910.95, the OSHA Occupational Noise Exposure Standard (OSHA Noise Standard) and 29 CFR 1904, the OSHA Occupational Injury and Illness Recording and Reporting Requirements (OSHA Recordkeeping Regulation) as they pertain to the issue of the roles of physicians and audiologists in determining that a worker's hearing loss case is not work-related.

OSHA's Noise Standard
The OSHA Noise Standard, 29 CFR 1910.95, applies to all employers with employees covered by the Occupational Safety and Health Act of 1970 (OSH Act), except those in construction, agriculture, and gas well drilling and servicing. See 46 *Federal Register* 42622. Paragraph (c) of the standard requires employers to establish a hearing conservation program for all employees whose exposure is equal to or above 85 decibels (dB) measured as an 8-hour time-weighted average (TWA) (the action level). Paragraph (d) requires employers to conduct monitoring to determine which of their employees are at or above the action level and to enable proper selection of hearing protectors. Employees exposed at or above the action level must be notified of their noise exposure level, and an audiometric testing program must be made available to all employees to monitor their hearing over time. See 29 CFR 1910.95(e) and 1910.95(g)(1).

Paragraph (g)(6) of the standard provides that employers must provide employees exposed at or above the action level with an annual audiogram to determine whether the employee has sustained a Standard Threshold Shift (STS). An STS is defined in paragraph (g)(10) as "a change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more at 2000, 3000 and 4000 hertz (Hz) in either ear." If there has been an STS, paragraph (g)(8) requires the employer to take certain follow-up measures, including fitting the employee with hearing protectors, training the employee in the use and care of hearing protectors, and requiring the employee to use the protectors.

Additionally, paragraph (g)(8)(ii) provides that the employer shall ensure that a number of steps are taken when a standard threshold shift occurs, unless a physician determines that the standard threshold shift is not work related or aggravated by occupational noise exposure. Thus, paragraph 1910.95(g)(8)(ii) is clear that, for purposes of OSHA's Noise Standard, only a physician can make the determination that a standard threshold shift is not work-related. As a result, employers would not be required to initiate the follow-up procedures set forth in paragraph 1910.95(g)(8) if a physician determines the STS is not work-related, i.e., neither caused by or contributed to occupational noise exposure.

OSHA's Recordkeeping Regulation
The OSHA Recordkeeping Regulation applies to all employers with employees covered by the OSH Act, although some employers are not required to keep injury and illness records if they have ten or fewer employers or have establishments in certain low hazard industries. Section 1904.10(a) of the regulation provides that employers must record work-related hearing loss cases when an employee's audiogram reveals an STS in hearing acuity, as defined in the OSHA Noise Standard, and when the employee's overall hearing level is 25 dB or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS.

Furthermore, Section 1904.10(b)(5) of the OSHA Recordkeeping Regulation requires an employer to consider a case to be work-related only when exposure at work either caused or contributed to a hearing loss, or significantly aggravated a pre-existing hearing loss. The section also states that there are no special rules contained in the recordkeeping system for determining whether an employee's hearing loss is work-related, but that employers must use the same rules contained in Section 1904.5 when making work-related determinations for any and all employee injury/illness cases, including hearing loss cases. Among other things, Section 1904.5 provides that the decision as to whether an injury or illness is work-related is ultimately the responsibility of the employer, and that every work-related determination must be evaluated on a case-by-case basis.

The OSHA Recordkeeping Regulation allows an employer to seek and consider the guidance of a physician or licensed health care professional when determining the work-relatedness of any worker injury or illness case. Section 1904.10(b)(6) emphasizes the fact that an employer may consider an employee's hearing loss case to be non work-related if a physician or other licensed health care professional determines the hearing loss is not work-related under section 1904.5. While the OSHA Recordkeeping Regulation has always contained a presumption of work-relatedness for cases occurring in the work environment, this presumption can be rebutted if it meets any of the exceptions contained in 1904.5(b)(2). For example, if an employee in a high-noise work environment meets the recording criteria for hearing loss, but a physician discovers that the employee has an inner ear infection that is entirely responsible for the loss, the case would not be considered work-related. (See 1904.5(b)(2)(ii).

Subpart G of the Part 1904 regulation defines the term "health care professional" as follows:

> a physician or other state licensed health care professional whose legally permitted scope of practice (i.e. license, registration or certification) allows the professional independently to provide or be delegated the responsibility to provide some or all of the health care services described by this regulation.

The use of the term "health care professional" in Part 1904 is consistent with definitions used in the medical surveillance provisions of several OSHA standards. 66 *Federal Register* 6078. Although Part 1904 does not specify what medical specialty or training is necessary, the definition of health care professional is intended to ensure that those professionals performing diagnoses, providing treatment and providing input for employer determinations about the recordability of certain cases are operating within the scope of their license, as defined by the appropriate state licensing agency.

Discussion
Employers must comply with OSHA's occupational noise standard at 29 CFR 1910.95 in monitoring employee exposure to occupational noise and in providing a hearing conservation program to reduce employee exposure to that hazard. Employers must also

comply with the requirements of 29 CFR Part 1904 in determining whether recordable injuries or illnesses have occurred and entering these on the OSHA Form 300, the Log of Work-Related Injuries and Illnesses (OSHA Log). While both sets of OSHA requirements involve determinations concerning whether an employee's hearing loss is occupational or not, these determinations are made for different purposes, and in compliance with different sets of OSHA requirements.

Based on the language in Section 1904.10(b)(6), for purposes of deciding whether a given instance of hearing loss should be included on the OSHA Log, an employer may seek the guidance of either a physician or other licensed health care professional as to whether a given hearing loss case is work-related. for purposes of the OSHA Recordkeeping Regulation, and unlike OSHA's Noise Standard, employers are not limited to only guidance provided by a physician when deciding whether a hearing loss is work-related. An audiologist could be considered a health care professional under the OSHA Recordkeeping Regulation and may be consulted for determining hearing loss work-relatedness for purposes of maintaining the OSHA Log, provided such individual is operating within the scope of their state license or certification when they make such decisions

The provision in Section 1904.10(b)(6) allowing employers to seek and follow the guidance of a physician or other licensed health care professional to determine whether or not hearing loss is work-related for recordkeeping purposes has no effect on the requirements in paragraph 1910.95(g)(8)(ii) of OSHA's Noise Standard. The definition of "health care professional" in Subpart G of Part 1904 relates only to the recordability of instances of hearing loss on the OSHA Log. It does not modify any OSHA standards or other OSHA regulations that require decisions to be made by a physician. OSHA has stated that it was not the Agency's intention for the use of the term "health care professional" in Part 1904 to modify or supersede any requirement in other OSHA standards or regulations. 66 *Federal Register* 6079. In fact, none of the injury and illness recordkeeping requirements in the Recordkeeping Regulation alter the obligations, definitions, or procedures contained in OSHA's Noise Standard. Employers are still required under the Noise Standard to have a physician make the determination that an employee's hearing loss is not work-related.

Again, please keep in mind that under the OSHA Recordkeeping Regulation, employers are ultimately responsible for determining whether an injury or illness is work-related. However, for purposes of OSHA injury and illness recordkeeping, employers may seek and consider the guidance of an audiologist or other licensed health care professional when evaluating the work-relatedness of hearing loss, provided the health care professional is operating within the scope of their state license or certification.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards and regulations. Section 8(c)(2) of the Occupational Safety and Health Act of 1970 (OSH Act) authorizes OSHA to issue regulations requiring employers to make and maintain accurate records of work-related injuries and illnesses. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. In addition, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at http://www.osha.gov. If you have any further questions, please contact OSHA's Office of Statistical Analysis at (202) 693-1875.

Sincerely,

Keith L. Goddard, Director
Directorate of Evaluation and Analysis

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