



OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with Manesh Rath



OSHA'S RECENT SILICA FAQs FOR GENERAL INDUSTRY

February 27, 2019
1001 G Street NW, Ste. 500 W,
Washington, D.C.

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LAWRENCE P. HALPRIN

Lawrence Halprin is a partner in Keller and Heckman's workplace safety and health, chemical regulation and litigation practice groups. He is nationally recognized for his work in workplace safety and chemical regulation. His workplace safety and health practice covers all aspects of legal advocacy, including: representing clients in OSHA and EPA investigations and enforcement actions; providing compliance counseling and training; conducting incident investigations, compliance audits and program reviews; participation in federal (OSHA, EPA and NIOSH) and state rulemakings and stakeholders processes; bringing and intervening in pre-enforcement challenges to final agency rules; advising on legislative reform and oversight; and participation in the development of national consensus standards under the ANSI process, and TLVs under the ACGIH process.

Mr. Halprin's engineering and financial background and extensive knowledge of agency rulemakings have greatly enhanced his ability to provide compliance counseling and represent clients in enforcement actions, and evaluate and critique rulemaking proposals and suggest alternative approaches. On behalf of one or more clients, Mr. Halprin has participated in almost every major OSHA rulemaking over the past 25 years as well as numerous Cal-OSHA rulemakings.



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Javaneh Nekoomaram is an associate in the environmental and workplace safety and health (OSHA) practice groups at Keller and Heckman. Ms. Nekoomaram practices in all areas of environmental law as well as occupational health and safety law, and chemical control law. She routinely advises clients on a broad range of environmental health and safety compliance issues.

Prior to joining Keller and Heckman, Ms. Nekoomaram served for three years as Counsel for the American Coatings Association. She provided regulatory compliance and advocacy on a number of issues on behalf of the coatings industry including TSCA, Prop 65, hazard communication and labeling, state chemical regulation, hazardous waste, air and water quality, occupational health and safety, and chemical safety regulations. She also served as Advocacy Counsel for the Graffiti Resource Council, an organization supported by the aerosol coatings industry that provides anti-graffiti strategies for cities across the country.



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TOPICS TO BE DISCUSSED

- Background on OSHA's silica standard
- Construction versus General Industry
- Issues facing General Industry about the silica standard
- Discussion of recent OSHA FAQs for General Industry
- What employers should do



BACKGROUND ON OSHA'S SILICA STANDARD

- Final rule: published 3/2016; compliance 6/2018
 - PEL: 50 $\mu\text{g}/\text{m}^3$, 8-hour TWA (subject to lab est. of sampling and analytical error)
 - AL: 25 $\mu\text{g}/\text{m}^3$, 8-hour TWA (subject to lab est. of sampling and analytical error)
 - Employee training
 - Written exposure control plan
 - Exposure assessment and monitoring
 - Housekeeping
 - Medical surveillance
 - Recordkeeping
 - Court remand to address medical removal



OVERVIEW OF SILICA RULE

- Compliance dates for general industry and maritime:
 - By 6/23/18: Comply with standard except for AL trigger for medical surveillance
 - Starting 6/23/18: Employers must offer medical exams to employees exposed above the PEL for 30 or more days per year
 - Starting 6/23/20: Employers must offer medical exams to employees exposed at or above AL for 30 or more days per year



GENERAL INDUSTRY VS. CONSTRUCTION

- General industry standard exempts “construction work”
 - Work for construction, alteration, and/or repair, including painting and decorating
- Can follow Table 1 in construction standard if:
 - General industry task is indistinguishable from a construction task in Table 1;
 - Task will not be performed regularly in the same environment and conditions; and
 - Compliance with construction standard.

ISSUES FACING EMPLOYERS SUBJECT TO STANDARD

- Enforcement trends:
 - General industry: 42 alleged violations
 - Construction industry: 117 alleged violations
- Common alleged violations – noncompliance with:
 - Exposure assessment requirement
 - Written exposure control plan
 - Table 1 controls (construction)

SILICA FAQs: SCOPE AND APPLICATION

- FAQs 1-3
- Outside scope if no occupational exposure to silica
- Exemption: employer has objective data demonstrating that employee exposure AL under any foreseeable conditions
 - Failure of engineering controls is “foreseeable condition” unless improbable or impossible (wall v. conveyor containment)
 - No categorical exemption for tasks with short-term exposures (15 min/day or less) but OSHA identified certain construction tasks
 - Employer must document determination that it meets exemption
 - HazCom still applies

SILICA FAQs: EXPOSURE ASSESSMENTS

- FAQs 7-11
- Employer may use performance option or scheduled monitoring option
 - Data generated under scheduled monitoring option can be used to fulfill requirements of performance option
 - FAQs include types of objective data
 - Employers may characterize employee exposures within a range and can use old sampling data

SILICA FAQs: EXPOSURE ASSESSMENTS

- FAQs 20-22
- Employers may consider SAE when determining compliance
- OSHA uses OSHA SLC Lab SAE in its enforcement
- Omission of employee social security numbers in air monitoring records is a *de minimis* violation



SILICA FAQs: REGULATED AREAS

- FAQ 25
- Must establish a regulated area wherever an employee's exposure exceeds, or can reasonably be expected to exceed, the PEL in that area
 - Vs. where the concentration of airborne substance exceeds the PEL (formaldehyde rule)
- Do not need to establish regulated area if:
 - Employees don't enter area or stay long enough to expect exposure to exceed PEL
 - OSHA "Safe Harbor": If employer has and enforces work rules precluding employees from entering the area, or limiting time in area, don't need to establish regulated area

SILICA FAQs: METHODS OF COMPLIANCE

- FAQs 30-31
- Employers can use engineering controls and work practices, including job rotation, to comply
- Engineering and work practices
 - If exposures at or below PEL, no additional controls needed
 - If above PEL, employer can comply if demonstrates that it has implemented all feasible engineering and work practice controls
- OSHA estimated mortality risk at 7/1000 for silicosis; 44/1000 for NMRD and 5-23/1000 for lung cancer under the new PEL

SILICA FAQs: WRITTEN EXPOSURE CONTROL PLAN

- FAQs 33-34
- Must cover all tasks covered by the standard
- May develop single comprehensive plan for each worksite
 - Generic plan with task-specific control measures
- Do not have to document review and evaluation of written exposure control plan
 - But you should (date and personnel performing review)



SILICA FAQs: HOUSEKEEPING

- FAQ 37: If subject to the standard, employer prohibited from dry sweeping or dry brushing if contributes to exposure to silica
 - Unless wet sweeping, HEPA-filtered vacuuming or other methods that minimize the likelihood of exposure are “not feasible”
- Examples of “not feasible” wet sweeping
 - Creates a hazard
 - Affects quality of work being done or final product
- Examples of “not feasible” HEPA-filtered vacuuming
 - Tight or obstructed spaces prevent accessibility
 - Large volume of material cannot be vacuumed

WHAT EMPLOYERS SHOULD DO

- Review all 64 FAQs
- Important to understand if you are subject to standard and which requirements are triggered
- At some point in time, every facility in the U.S. has exposures due to maintenance or construction
- FAQs are guidance, not a standard or regulation
- Reminder: OSHA to propose revisions to Table 1 of construction standard; remand of med. removal open



REMINDER: MARCH 2ND DEADLINE

- CY 2018 OSHA Form 300A data must be electronically submitted to OSHA via ITA portal by March 2, 2019
- Previous OSHA 30/30s on OSHA I&I recordkeeping rule:
 - May 30, 2018: <https://www.khlaw.com/OSHA-3030-May-30>
 - Oct. 25, 2017: <https://www.khlaw.com/OSHA-3030-October-25-2017>
 - Dec. 7, 2016: <https://www.khlaw.com/OSHA-3030-December-7-2016>
 - May 17, 2016: <https://www.khlaw.com/OSHA-3030-May-17-2016>
 - Aug. 26, 2015: <https://www.khlaw.com/OSHA-3030-August-26-2015>



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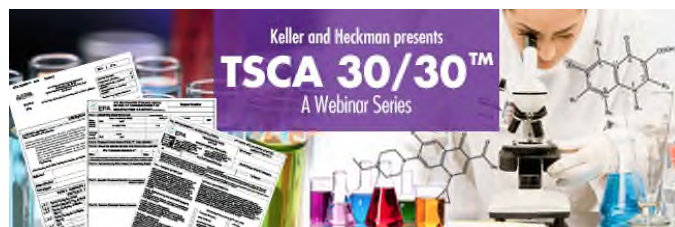
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