

**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)  
REGULATORY UPDATES**

**FINAL STATUTES, RULEMAKINGS, AND GUIDANCE**

Citations	Summary
<p>Publication Date of Final Rule: 1/18/2011</p> <p>Federal Register No.: 76:2808-2826</p> <p>Standard No: 24; 1979.110(a); 1980.110(a); 1981</p> <p>Title: Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as Amended</p>	<p>OSHA published in the Jan. 18 Federal Register its final rule establishing procedures for handling whistleblower complaints made under the Energy Reorganization Act and six environmental statutes. Among other provisions, the final rule states that whistleblower complaints under these statutes may be filed either orally or in writing. OSHA believes that this approach will improve access to the complaint-filing process for workers who may have difficulty submitting written complaints for a variety of reasons. These regulations also make it clear that if the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language. See the <a href="#">Federal Register notice</a> for more information and <a href="http://www.whistleblowers.gov">www.whistleblowers.gov</a> to learn more about OSHA's Whistleblower Protection Program.</p> <p>OSHA administers the whistleblower protection provisions of twenty-one whistleblower protection statutes, including Section 11(c) of the Occupational Safety and Health Act (OSH Act), which prohibits any person from discharging or in any manner retaliating against any employee because the employee has exercised rights under the OSH ACT. Rights afforded by the OSH ACT include employee participation in safety and health activities, such as complaining to OSHA and seeking an OSHA inspection, participating in an OSHA inspection, participating or testifying in any proceeding related to an OSHA inspection, and reporting a work-related injury, illness, or fatality.</p>

**Letters of Interpretation:**

OSHA issued the following letters of interpretation from January through February 2011. Links to the letters are provided below each reference.

- Clarification of terms “First Discovered” and "Employee’s Working Lifetime" as it relates to what it means for a hazard to be "first discovered" and also how OSHA calculates an employee's working lifetime.[29 U.S.C. § 654(a)(1) (general duty clause), OSH Act, 29 U.S.C. § 655(b)(5),]. Issued February 28, 2011.
  - [http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=27647](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27647)
- Addressing whether wearing a skirt in a restaurant kitchen setting may pose a safety hazard. [29 U.S.C. §654(a)(1) (general duty clause)], Issued on February 23, 2011.

- [http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=27644](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27644)
- Whether OSHA will adopt and enforce the latest American National Standards Institute's (ANSI) standards regarding accident prevention signs and physical hazard marking. [1910.144; 1910.145(d)(3); 1910.145 (d)]. Issued on February 22, 2011.
  - [http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=27641](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27641)

### **Other Recent Developments:**

#### **OSHA acts to protect workers in residential construction**

OSHA issued a [new directive](#) withdrawing a former one that allowed residential builders to bypass fall protection requirements. The directive being replaced, issued in 1995, initially was intended as a temporary policy and was the result of concerns about the feasibility of fall protection in residential building construction. However, according to data from the department's Bureau of Labor Statistics, there continues to be a high number of fall-related deaths in residential construction and industry experts now feel that feasibility is no longer an issue or concern. The National Association of Home Builders, the National Advisory Committee for Construction Safety and Health, and the Occupational Safety and Health State Plan Association all recommended rescinding the 1995 directive. To view the directive and for more information, visit OSHA's [Residential Fall Protection](#) page.

#### **OSHA withdraws proposed interpretation on occupational noise and examines other approaches to prevent work-related hearing loss**

OSHA announced Jan. 19 that it is withdrawing its proposed interpretation titled "Interpretation of OSHA's Provisions for Feasible Administrative or Engineering Controls of Occupational Noise." The interpretation would have clarified the term "feasible administrative or engineering controls" as used in OSHA's noise standard. The proposed interpretation was published in the [Federal Register](#) Oct. 19, 2010.

"Hearing loss caused by excessive noise levels remains a serious occupational health problem in this country," said OSHA Assistant Secretary David Michaels in a [news release](#). "However, it is clear from the concerns raised about this proposal that addressing this problem requires much more public outreach and many more resources than we had originally anticipated. We are sensitive to the possible costs associated with improving worker protection and have decided to suspend work on this proposed modification while we study other approaches to abating workplace noise hazards."

These efforts include conducting a thorough review of submitted comments and any other information OSHA receives on this issue; holding a meeting on preventing occupational hearing loss open to employers, workers, and noise control and public health professionals; consulting with experts from the National Institute for Occupational Safety and Health and the National Academy of Engineering; and initiating a vigorous effort to provide enhanced technical information and guidance on the many inexpensive, effective engineering controls for dangerous noise levels.

### **OSHA issues enforcement guidance on providing and paying for personal protective equipment for general industry workers**

A new directive went into effect Feb. 10 that provides OSHA enforcement personnel with instructions for determining whether employers have complied with the agency's [personal protective equipment standards](#). These PPE standards require employers to provide--at no cost to workers--protective equipment, such as goggles and face shields to prevent eye injuries; earplugs and earmuffs to prevent hearing loss; and respirators to protect workers from exposure to air contaminants. The new [Enforcement Guidance for Personal Protective Equipment in General Industry](#) clarifies what type of PPE employers must provide at no cost to workers and when employers are required to pay for PPE. The directive also provides guidance that allows employers to use PPE that complies with current consensus standards, and updates PPE enforcement policies based on court and review commission decisions. See the [news release](#) for more information.

### **Revised national emphasis program expands worker protection against exposure to harmful food flavorings**

OSHA revised its [National Emphasis Program on Microwave Popcorn Processing Plants](#) to minimize or eliminate worker exposure to the hazards associated with microwave popcorn manufacturing. Diacetyl is a chemical used to add flavor and aroma to food and other products. Some workers who breathe diacetyl on the job have become disabled or have died from severe lung disease. Some microwave popcorn manufacturers are using diacetyl substitutes that have produced similar health effects as diacetyl, and therefore, may also cause harm to workers. See the [news release](#) for more information on this revised National Emphasis Program. OSHA's [Safety and Health Information Bulletin](#) and companion [Worker Alert](#) recommend engineering and work practice controls for regulating diacetyl and diacetyl substitute exposures in the workplace.

### **OSHA temporarily withdraws proposed column for reporting work-related musculoskeletal disorders**

OSHA announced Jan. 25 that it has temporarily withdrawn from review by the Office of Management and Budget its proposal to restore a column for work-related musculoskeletal disorders on employer injury and illness logs. OSHA has taken this action to seek greater input from small businesses on the impact of the proposal. According to the Bureau of Labor Statistics, MSDs accounted for 28 percent of all reported workplace injuries and illnesses requiring time away from work in 2009. OSHA and the U.S. Small Business Administration's Office of Advocacy will jointly hold a meeting to engage and listen to small businesses about the agency's proposal. See the [news release](#) for more information.

### **Dangers of distracted driving**

OSHA's new [distracted driving brochure](#) explains to employers and supervisors the importance of preventing texting by their workers while driving. Texting while driving dramatically increases the risk of motor vehicle crashes, the leading cause of worker fatalities. Distracted driving crashes killed more than 5,400 people and injured nearly 500,000 in 2009. OSHA encourages trade associations to share this brochure with their members. It can be downloaded or ordered from the [Publications](#) page of



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OSHA's Web site. This resource is part of OSHA's [Distracted Driving Initiative](#), which OSHA Assistant Secretary David Michaels discussed with stakeholders in a March 3 teleconference.