

OSHA Alert

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Employees Must Understand Safety Training

by Rod Smith and Pat Miller

In a recent policy statement, OSHA advised employers to present employee safety and health training in a manner that employees can understand or face violations of OSHA's training standards. The new policy could pose challenges for many employers.

OSHA takes the position that an employer must instruct its employees using both a language and vocabulary that employees can understand. For example, if an employee does not speak or comprehend English, instruction must be provided in a language the employee understands. Additionally, employees who may speak English, but who are illiterate or have reading difficulties, may not be trained by being told to read training materials. OSHA expects employers to “realize that if they customarily need to communicate work instructions or other workplace information to employees at a certain vocabulary level or in a language other than English, they will also need to provide safety and health training to the employees in the same manner.”

Neither the OSHA Act nor OSHA's standards requires the translation of safety documents or training. Indeed, the Hazard Communication standard requires Material Safety Data Sheets to be in English. However, some OSHA standards require “adequate” or “effective” training, or retraining if “inadequacies” in training are discovered. OSHA interprets this language as requiring employers to present training in a manner employees can understand.

In the past, OSHA has issued citations for violations of training standards when training was not provided in a language that could be understood by foreign-speaking employees. The Occupational Safety and Health Review Commission and the courts have also upheld training violations where the employer did not translate training materials, safety instructions, or required documents. Until now, neither OSHA nor the Review Commission have addressed the issue of inadequate training when the employee is illiterate or has limited reading or cognitive abilities. In its policy statement, OSHA instructs its compliance officers to look at whether employers are “transmitting information with comprehensibility in mind.” In situations where a “reasonable person” would conclude that the employer has not provided the information in a manner they are capable of understanding, compliance officers are directed to issue “Serious” citations for violations of OSHA's training standards.

OSHA's policy raises some troubling issues. Allowing the compliance officer to determine whether a “reasonable person” would determine whether the training has been provided in a manner capable of understanding is extremely ambiguous and subject to arbitrary enforcement.

Many safety professionals understand the need to translate training materials into appropriate foreign languages, but OSHA provides no guidance as to what an employer must do to assure that training is presented in a manner or “capable of understanding” so as to avoid a citation. Teaching and learning styles and techniques vary widely among employers and employees. Often, OSHA compliance officers only evaluate the effectiveness of employer training by giving employees a “pop-quiz” on various subject requirements during a private interview. Some employees understandably fail this quiz because they are nervous or scared, even though they have been trained by the employer.

What should employers do to assure that their employees understand safety training and to avoid citations? Providing complex written materials with a sign-off sheet that the employee “has read and understood” them is probably not enough, particularly if the employee cannot read or comprehend the rules. To address this issue, some employers have:

- Adopted simplified safety rules and “plain English” restatements of OSHA requirements.
- Utilized written tests, translated where necessary, to confirm employee knowledge.
- Where written language is a barrier, drafted policies and training materials with diagrams or pictures, often showing the “right way” and the “wrong way.”
- Verbally quizzed employees with written language barriers, making certain to document the determination that the employee adequately understood the materials.
- Used a documented task evaluation which requires employees to actually demonstrate how to safely perform the job, such as putting on a safety harness or locking out a piece of equipment.

These efforts may go a long way to assure that employees actually understand the safety training they are receiving and convincing OSHA that the material was presented in a manner capable of understanding.

To assist employers in meeting its training obligations, OSHA has created a web-based assistance tool intended to help employers with a Spanish-speaking workforce. This tool is located on OSHA's website at:

www.osha.gov/dcsp/compliance_assistance/quickstarts/hispanic/index_hispanic.html

OSHA's new Training Standards Policy Statement can be found at:

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=25658

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