

Client Alert

Tort Litigation & Environmental Practice Group

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New OSHA Silica Rule Deadline Is Rapidly Approaching – Are You Ready?

While the Summer of 2018 may seem far away, companies should be preparing now to be ready to meet the significant new requirements of the U.S. Occupational Safety and Health Administration's ("OSHA") new rule for respirable crystalline silica.¹ Compliance obligations under the new rule start on June 23, 2018.

Silica is believed to be the most pervasive workplace contaminant of all with an estimated 50% of all workplaces having potentially respirable silica present in some fashion. The new silica rule is notable because it greatly reduces the permissible exposure level (PEL) for employees and creates many new requirements for businesses. Companies will be required to implement engineering and work practice controls to reduce exposures, and only if these administrative controls are insufficient in controlling silica, will respiratory protection be allowed. With the new rule's requirements for engineering and work practice controls, the economic impact to businesses from compliance with the new rule will be severe.

The following are some of the more significant requirements in the rule:

- No worker can be exposed to respirable crystalline silica in excess of a permissible exposure limit of $50 \mu\text{g}/\text{m}^3$ over an 8-hour time-weighted average. This is a reduction of 50% over the previous PEL.
- Employers must limit worker access to areas of respirable silica exposure and demarcate these regulated areas from the rest of the workplace.
- Employers must develop a written plan to limit exposures and provide additional employee training.
- Employers must provide medical exams to certain exposed workers at least every three years.
- Housekeeping practices which might contribute to silica exposure, such as dry sweeping, are prohibited.

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Not surprisingly, many businesses and coalitions have strenuously objected to the new rule. Almost immediately after the rule's adoption there were seven different petitions for review filed in six federal Courts of Appeal. These cases have been consolidated into a single challenge in the U.S. Court of Appeal for the District of Columbia Circuit.² The challenge involves industry groups as well as labor unions and addresses questions as to the technological and economic feasibility of the required engineering controls, whether the standard substantially reduces risk for exposed workers, and whether the standard is supported by substantial evidence. Despite these pending challenges, considering the significant work and time lapse that will be needed to meet the new silica requirements, companies cannot afford to wait in preparing for the new rule. It is important to note that the silica rule was completed outside of the window that would have allowed the next Congress and administration to possibly veto the rule under the Congressional Review Act.

With the deadline looming, companies will need to make substantial efforts to come into compliance. King & Spalding has significant experience in occupational health and safety matters including performing privileged health and safety audits of facilities, as well as challenging OSHA citations and negotiating settlements. If you have questions about this Rule or how OSHA regulations may affect you and your business, please contact any of our lawyers noted in the contact section on the first page.

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This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."

¹ 29 C.F.R. § 1910.1053 (2016).

² *In re Occupational Safety & Health Admin.*, No. 03/1:16-ca-01774 (J.P.M.L. Apr. 12, 2016) (consolidation order); *N. Am.'s Bldg. Trades Unions et al., v. Occupational Safety & Health Admin., et al.*, No. 16-1105 (D.C. Cir. Apr. 1, 2016).