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OSHA issues new guidance on variances

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On September 27, 2012, the U.S. Occupational Safety and Health Administration (OSHA) issued a press release announcing its enhanced variance procedures on its webpage. A variance is a formal action by the agency which allows a company to deviate from the requirements of an OSHA standard in certain circumstances.

Previously, OSHA's webpage only listed variance requests that had been approved. Now, OSHA's webpage contains listings of both denied and approved variance requests. It also provides detailed information as to how employers may request a variance from the agency.

The bases for variances include:

- (a) inability to fully comply on time with a new safety or health standard due to a shortage of employees, materials, or equipment; and
- (b) the use of methods, equipment, or facilities that the company management believes protects employees as good as or better than the particular OSHA standard.

There are essentially four types of variances:

- (a) temporary;
- (b) permanent;
- (c) experimental; and
- (d) national defense.

A variance application, according to OSHA's website, can be in the form of a letter and should include the following information:

- An explicit request for a variance.
- The specific standard from which the employer is seeking the variance.
- Whether the employer is applying for a permanent, temporary, experimental, national defense, or

recordkeeping variance, and an interim order. If the application is for a temporary variance, state when the employer will be able to comply with the OSHA standard.

- Describe the alternative means of compliance with the standard from which the applicant is seeking the variance. The statement must contain sufficient detail to support, by a preponderance of the evidence, a conclusion that the employer's proposed alternate methods, conditions, practices, operations, or processes would provide workers with protection that is at least equivalent to the protection afforded to them by the standard from which the employer is seeking the variance. National defense variances do not require such a statement, and the statement submitted by an employer applying for a temporary variance must demonstrate that the employer is taking all available steps to safeguard workers.

- Provide the employer's address, as well as the site location(s) that the variance will cover.

- A certification that the employer notified employees using the methods specified in the appropriate variance regulation.

- An original copy of the completed variance application signed by the employer or an authorized representative of the employer.

For most Kentucky employers the variance request should be submitted to the Kentucky OSH Program in Frankfort. See: <http://www.labor.ky.gov/dows/oshp/Pages/Occupational-Safety-and-Health-Program.aspx>.

The OSHA Fact Sheet relating to variances may be found at: http://www.osha.gov/OshDoc/data_General_Facts/VarianceFactS.pdf.

The website containing the information as to how to apply for a variance may be found at: <http://www.osha.gov/dts/otpca/variances/apply.html>. ▲