

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF OCCUPATIONAL SAFETY & HEALTH**LEGAL UNIT**

1515 CLAY STREET, SUITE 1901
OAKLAND, CALIFORNIA 94612
TELEPHONE: (510) 286-7348
FACSIMILE: (510) 286-7039



October 11, 2017

Via Mail and Facsimile: (310) 276-2912

Leslie E. Chayo
Law Offices of Leslie E. Chayo
9401 Wilshire Boulevard, suite 1250
Beverly Hills, CA 90212

Re: Applicability of Crystalline Silica Dust Standards to the Equipment Rental Industry

Dear Mr. Chayo:

I am writing in response to your July 23, 2017 letter to Chief Juliann Sum requesting guidance on how California's crystalline silica dust standards may be applied to the equipment rental industry in the State. In your letter, you set forth the following query:

[A]s the rental centers do not have any employees utilizing equipment that produces Silica Dust, is there a duty to warn or a duty to provide safety equipment to a customer that rents such equipment for use on their jobsite? (Emphasis in original.)

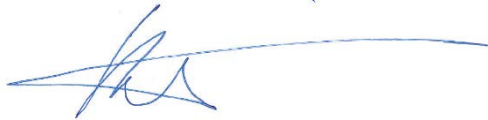
While your letter does not cite to a specific regulation, I assume that you are referring to California Code of Regulations, title 8, section 1532.3 ("Occupational Exposures to Respirable Crystalline Silica"). Thus, this response is provided in the context of section 1532.3. Please note that Cal/OSHA's response focuses only on whether an equipment rental company may have a duty under the California Occupational Safety and Health Act. This response does not address whether there may be any other duty on an equipment rental company outside of the Cal/OSHA context.

Under the scenario you present, an equipment rental center would not have any of its own employees utilizing equipment that would produce silica dust. Even when an employer does not have any of its own employees exposed to a regulated hazard, however, that employer may still, in some circumstances, be liable for violating the regulation at issue based on the exposure of another company's employees to the hazard. California Code of Regulations, title 8, section 336.10 sets forth the categories of employers who may be cited for a violation under the California Occupational Safety and Health Act on a multi-employer worksite.

In certain circumstances, an equipment rental company providing equipment to a worksite could be citable as either a "creating employer" or a "correcting employer." Title 8, section 336.10 defines a "creating employer" as the "employer who actually created the hazard" (subdivision (b)) and a "correcting employer" as the "employer who had the responsibility for actually correcting the hazard" (subdivision (d)). Whether an equipment rental company qualifies as either a creating or correcting employer in a specific factual situation would be determined on a case-by-case basis according to the facts of each case.

Please contact me if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'NDS', with a long horizontal line extending to the right.

Nathan D. Schmidt
Assistant Chief Counsel
Division of Occupational Safety and Health

NDS:mad

cc: Juliann Sum