



Volume 9, Issue 2

June 2002

Law Enforcement Action Forum NEWSLETTER



MIOSHA AFFECTS LAW ENFORCEMENT

By Joe Hunold, CPCU, ALCM, Loss Control Consultant and
Gene King, Loss Control Consultant

INTRODUCTION

Law enforcement personnel face a variety of safety and health issues every day. Some of the exposures are relatively minor. Others can have long term consequences that affect an officer's quality of life or result in death. Unless a municipality eliminates or mitigates these risk exposures, officer safety is at risk, and the municipality could incur the costs associated with an injured employee's lost time and fines from MIOSHA. These costs can be significant.

HISTORY OF OCCUPATIONAL SAFETY & HEALTH

On December 29, 1970, President Richard M. Nixon signed the Occupational Safety and Health Act of 1970 into law. Congress declared that the purpose of this legislation was "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." The Act took effect April 28, 1971. On the same day, the government launched the Occupational Safety and Health Administration (OSHA). The Act allows states to follow the federal standards or to develop their own plans.

A major difference between federal OSHA and state operated plans is that the Act requires that state plans include, to the extent permissible by state law, an effective and comprehensive occupational safety and health program that **covers all employees of public agencies of the State and its political subdivisions.** The state program must be as effective as the programs contained in the plan that applies to any other employees.

The Michigan Occupational Safety and Health Act (MIOSHA), Public Act 154 of 1974, became effective January 1, 1975.

Currently, the Bureau of Safety and Regulation in the Department of Consumer and Industry Services administers it (www.cis.state.mi.us).

MIOSHA's guiding principle is that the agency exists to assist employers and employees through a combination of enforcement, consultation, education and training as well as other support services. The MIOSHA program, through a state-plan agreement with federal OSHA, covers nearly all Michigan employers and employees.

This Is How It Works

Safety and health hazards exist in all areas of law enforcement activities. For example, several safety and health issues are present during normal training activities. Firearm qualification is just one example. Inhalation of lead fumes and gasses from expelled primers and powder can result in lead poisoning and respiratory illnesses. Impact noise can contribute to hearing loss. Ejected cartridges and splash back particulate create eye, head and face hazards.

MIOSHA has developed safety and health standards that directly relate to many of these hazards. If a department is not in compliance with these specific standards, a MIOSHA compliance officer can issue citations with civil penalties of up to \$7,000 for each violation. If no specific standard addresses a hazard, a MIOSHA compliance officer can invoke the General Duty clause as a basis of citation. The General Duty Clause states "*each employer has the general duty to furnish each of his employees employment and places of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm.*"

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USE OF PERSONAL PROTECTIVE EQUIPMENT

MIOSHA, Part 33 is the standard for Personal Protective Equipment (PPE) when it is not feasible to use engineering controls for eliminating or reducing hazards. For example, safety glasses, a billed cap, and hearing protection should be minimum requirements during firearm qualification. Part 33 requires employers to develop a **written** hazard assessment for PPE. This means that employers must identify exposures to hazards in their workplace, determine if their workers need protective equipment, and identify the most appropriate type to provide. An example of an identified hazard is the potential for blunt trauma by a variety of weapons or objects. The PPE that employers have identified to protect against the result of this exposure is body armor. Responding to traffic accidents and performing traffic control functions are regular activities for law enforcement. Many officers are exposed to injury or death because passing motorists do not see them. High visibility clothing with retro-reflective markings is the recommended PPE that officers should use during traffic accident investigations and traffic control activities. These vests can reduce the probability of being struck by a passing motorist.

If the assessment determines that PPE should be in use to reduce the exposure of employees to hazards, the employer must implement and maintain a **written program**. The program documents the employer's identification and evaluation of hazards in the workplace. If use of PPE is an appropriate control measure, the program should include an explanation of how the employer selects it as well as how employees use and maintain it. MIOSHA also requires that employees must receive training in using PPE properly. The employer should conduct ongoing evaluations of its PPE program to determine its effectiveness in preventing employee injury or illness. Chapter 24 of the *Law Enforcement Action Forum Manual for Law Enforcement Risk Reduction* discusses the use of PPE. The MML Fund also provided resources in the *Safety and Health Resource Manual*. For more information, go to www.osha.gov subject index, personal protective equipment.

LEAD EXPOSURE

MIOSHA Part 310 establishes employers' obligations when employees have a significant exposure to lead. Most range officers may fall under these requirements. To avoid problems in this area, departments should use ammunition that does not contain lead. As with any other MIOSHA standard, employees must receive training in the hazards of lead exposure and how to avoid it. Some of the basic requirements of Part 310 are:

Rule 7. (1) An employer shall monitor employee exposures and shall base initial determinations on employee exposure monitoring results on any of the following considerations:

- (a) Information, observations, or calculations that would indicate employee exposure to lead.
- (b) Previous measurements of airborne lead.
- (c) Employee complaints of symptoms which may be attributable to exposure to lead. *This could include anemia, colic (a smooth muscle spasm, causing abdominal cramping pain), palsy (a neuromuscular deficit evidenced by a wrist or foot drop) or elevated blood-lead levels (verified by lab tests).*

Rule 9. If a determination is made, pursuant to R 325.51906 and R 325.51907, that employees are not exposed to airborne concentrations of lead at or above the action level, an employer shall make a written record of that determination. The record shall include the information required pursuant to R 325.51907 and shall also include all of the following:

- (a) The date of the determination.
- (b) The job descriptions and location within the worksite.
- (c) The name and social security number of each employee monitored.

Rule 15. (1) An employer shall establish and implement a written compliance program to reduce exposures to at or below the permissible employee exposure limit prescribed by R 325.51903, and interim levels if applicable, solely by means of engineering and work practice controls in accordance with the implementation schedule prescribed in R 325.51914.

Rule 25. Surfaces in a workplace shall be maintained as free as practicable from accumulations of lead.

Rule 26. (1) Floors and other surfaces where lead may accumulate in a workplace shall **not** be cleaned with the use of compressed air. (2) Shoveling, dry or wet sweeping, and brushing may be used for cleaning a workplace only if vacuuming or other equally effective methods have been tried and found not to be effective in removing lead accumulations. (3) If vacuuming methods are selected for cleaning a workplace, a vacuum shall be used and emptied in a manner which minimizes the reentry of lead into the workplace. *The vacuum should have a high efficiency particulate air (HEPA) filtration system.*



Rule 28. An employer shall assure that food or beverages are not present or consumed, tobacco products are not present or used, and cosmetics are not applied in areas where employees are exposed to lead.

Rule 32. (1) An employer shall institute a medical surveillance program for each employee who is or may be exposed to concentrations of lead greater than the action level for more than 30 days a year. (Generally the Range Officer or Firearms Instructor)

Range officers can inhale, absorb, and ingest lead dust. Enforcing range rules governing clean up, washing hands (*especially before using the bathroom*), and not allowing food consumption can have a significant impact on reducing lead absorption. Having adequate ventilation for indoor ranges is an engineering control that can reduce many of the inhalation exposures.

GAS MASKS AND RESPIRATORS

With today's heightened awareness of the potential need for responding to terrorism incidents, employers should not overlook the requirements of a respiratory protection program and chemical resistant clothing protection. MIOSHA Part 33 directly relates to this PPE.

Whenever respirators are necessary to protect the health of the employee, MIOSHA requires employers to develop and implement a written respiratory protection program. This requirement also holds should an employer require an employee to wear a respirator in a situation where the standard does not otherwise require such use. The program must include workplace-specific procedures. Part 33 also requires employers to select respirators that protect employees against the physical state and chemical form of the particular contaminant or contaminants present in the workplace. This means that any department that issues a gas mask, SCBA or biological hazard respirator must comply with MIOSHA Part 451 of the Occupational Health Standards (which specifically adopts by reference the OSHA standard for respiratory protection [CFR 1910.134]). This does not apply to the voluntary use of dust masks or filtering face pieces. However, if the employer issues these types of PPE and requires their use, a written program is necessary. Chapter 24 of the *Law Enforcement Risk Reduction Manual* contains the policy and support materials a department needs to comply with this Standard.

AEROSOL SPRAY

Aerosol chemical weapons create an acute inhalation exposure for the suspect and for the arresting officer. Most departments have adopted a standard protocol for the use of

this equipment. Because of the potential risk exposure, departments should conduct training on the use of aerosol sprays only with appropriate safety and medical controls in place. These controls include having adequate decontamination supplies and equipment to implement the department's exposure and decontamination process. Departments should ensure that an EMT or Paramedic is onsite during training to assist anyone who may develop a medical problem.



MIOSHA has stated that, while it believes that exposure during training should be voluntary, it is acceptable for departments to require an exposure prior to allowing officers to carry an ASR on the street.

VEHICLE OPERATIONS

Officers spend an enormous amount of time in motor vehicles and, not surprisingly, motor vehicle accidents are a leading cause of serious injury and death for law enforcement personnel. Law enforcement agencies must require employees to use seatbelts when occupying a motor vehicle because seatbelt usage will help departments to reduce the primary injury potential. In addition, failure to wear a seatbelt violates the Michigan Vehicle Code and probably violates a rule of most departments.

Vehicles are also equipped with a wide range of equipment and devices that can increase the risk exposure to a vehicle's occupants. Officers must make sure that all auxiliary tools and equipment are in the proper position and secured to reduce this secondary injury potential. MIOSHA will use the General Duty Clause to issue citations in this area.

COMMUNICABLE DISEASES

Arrest and apprehension activities pose unlimited safety and health exposures. For example, communicable diseases have become a significant concern. Nearly one-third of the world's population is infected with Tuberculosis (TB), a disease that kills almost three million people annually and is the world's leading cause of death from an infectious agent. In the mid-1980s a resurgence of outbreaks in the United States brought new attention to TB. Increases in the incidence of TB are related to the high risk among immunosuppressed persons, particularly those infected with HIV. Drug resistant strains of this deadly disease have contributed to the problem. Outbreaks have occurred in hospitals, correctional institutions, homeless shelters, nursing homes, and residential care facilities for AIDS patients. Nationwide, at least several hundred employees have become infected and have required medical treatment after workplace exposure to TB. For more information



read Fact Sheet No. OSHA 93-43, **ENFORCEMENT POLICY ON TUBERCULOSIS** available at www.osha.gov. This document covers criteria for employee screening, negative pressure facilities and sanitary practices. Most police vehicles have a positive pressure flow through ventilation system. Regular inspections of vehicles should occur to ensure that the ventilation is working properly. Cracking the back window and turning on the vent fan when a person is placed in the vehicle is another way to ensure proper ventilation.



Bloodborne infectious diseases pose a serious risk that law enforcement often overlooks until an exposure occurs. By then, it may be too late. It is essential for officers to use barrier protection when their hands might come in contact with infectious materials or hazardous chemicals. MIOSHA's Bloodborne Infectious Disease Standard, Part 554, requires that employees wear protective gloves when it is reasonably anticipated that hand contact may occur with blood, other potentially infectious materials, mucous membranes, non-intact skin, or contaminated items or surfaces. It is important for departments to have an up to date bloodborne pathogen and infectious disease policy. MIOSHA requires yearly training for all employees who are in jobs that may have an exposure. Agencies should always document the policy update and training.

Law enforcement and health care have used Natural Rubber Latex (NRL) gloves for barrier protection for a number of years because using them reduces exposure to bloodborne infectious disease. However, allergy to latex has become a major health concern as increasing numbers of people in the workplace have developed sensitivity to this material. This sensitivity may result in a variety of reactions. The reactions can range from localized redness, rash, or oozing lesions similar to poison ivy, to nasal, sinus or asthmatic manifestations, including cough, wheeze, shortness of breath, and chest tightness. On rare occasions, individuals have suffered systemic reactions that cause swelling of the face, lips, and airways. These types of reactions may progress rapidly to shock and have the potential to cause death.

Responding to reports of NRL allergy in some patients and workers, government agencies have recommended measures for reducing this risk. Primary prevention involves reducing the potential development of allergy by minimizing unnecessary exposure to NRL proteins. The Federal Drug Administration (FDA) has approved gloves and respirators made of NRL as well those made of synthetic materials for marketing as medical, protective equipment that provides effective barrier protection

against bloodborne pathogens. General administrative procedures to reduce exposure to NRL proteins can be found at: www.cdc.gov/niosh/98-113pd.html and www.osha-slc.gov/html/hotfoias/tib/TIB19990412.html

Appropriate work practices when wearing hand protection, including NRL gloves, are avoiding contact with other body areas such as the eyes or face as well as prompt removal and proper disposal of gloves. MIOSHA's Bloodborne Pathogens Standard requires employees to wash their hands after removing gloves. Hand washing also helps to minimize powder and/or NRL remaining in contact with the skin.

FACILITY HAZARDS

When MIOSHA visits, the inspector will look at the facility to ensure that there are no physical hazards. MIOSHA checks that:

- Automatic overhead garage doors for sally ports retract when blocked by any obstruction during closing or have wiring that requires constant pressure on the down switch to fully close the door.
- All electrical outlets in areas of potential water exposure have ground fault circuit interrupters (sally ports, sinks and bathrooms).
- Any use of extension cords is for temporary service only (less than 90 days).
- The agency stores combustibles and flammables properly (in appropriate containers and away from heat sources).
- All switch and plug plates are properly installed.
- The pathway to breaker boxes is free of obstructions and that the boxes are easy to reach.
- Circuits in breaker boxes have correct labeling.
- Pathways to exit doors are free of stored materials and other obstructions.
- The agency complies with the Michigan Right to Know Standard. The standard requires employers to train their employees on any chemicals in their workplace and to assure that all chemicals are in containers with labels clearly indicating their content. Frequently, window cleaner, windshield washer fluid, oil, bleach and soap are poured into different, unlabeled containers and set aside. This is an easy fine!

The department must also maintain a list of any chemicals it stores in more than household quantities. The agency must keep Material Data Safety Sheets on any chemicals in a location where every employee can review them at any time. These rules also apply to small quantities of chemicals and of household cleaners if the material is hazardous. For example, most materials used to



clean guns are hazardous as are aerosol sprays. Even though the stored quantity may be small, these chemicals fall under the Right To Know Standard. We recommend keeping an MSDS on aerosol sprays in each patrol vehicle so officers can give it to Emergency Room personnel if needed for treatment.

- Emergency lighting, lighted exit signs, and fire extinguishers undergo monthly inspections to ensure that they are working properly (MIOSHA Part 8). The agency should document these inspections. The agency should also develop and post an emergency evacuation plan that meets the requirements of MIOSHA Part 6, especially if it operates a lock up.
- Walking surfaces are in good condition and maintained properly. Slips, trips and falls are a leading cause of injury to law enforcement personnel. Snow and ice covered parking lots, uneven sidewalks, and poorly maintained walking surfaces contribute to these types of injury every year. Although the department cannot control public areas, it must be diligent about maintenance around the station and other municipal parking areas. Departments should change out mats more frequently during inclement weather. They should eliminate cords and wires under desks and strung in walkways because these may cause trips and falls. They should also make sure that all wires are free of frayed areas or cracked insulation and kept out of areas where people may put their feet.
- The agency has displayed all the required federal and state employment posters in an area where all employees can easily see them. Many vendors sell state specific laminated posters. It is important that the Right to Know poster reflects the contact person and the location of the MSDS information.

A LITTLE THING THAT CAUSES BIG PROBLEMS

After an absence of many years, a significant problem has recently resurfaced in some municipalities. Employees are slipping and falling because of the application of materials to vehicle floor mats during cleaning or detailing to make the rubber or vinyl shine. The residue gets on employees' shoes, and when they walk on flooring, they slip and fall as if walking on an oiled surface. **DO NOT ALLOW THE USE OF THIS MATERIAL ON THE FLOORS OR MATS OF YOUR VEHICLES.** Law enforcement executives should make employees aware of this hazard and prohibit them

from using the vehicle until the material is removed. They should also require employees to report the problem as soon as they notice it.



CONCLUSION

There is not space enough to discuss all the potential exposures and potential MIOSHA violations that might exist. We have, however, included the most commonly identified ones. Every person has ownership of safety in the workplace. The management of any organization is responsible for the health and safety of its employees. Likewise, employees are responsible for following management's rules, participating in training, and using the tools their employers provide in a safe and prudent manner. By fostering a cooperative and proactive risk management program, which includes compliance with MIOSHA Standards and common sense, management can increase the probability that the workplace will be safe. Using good judgment as they perform their job tasks should help employees to maintain their physical well being. By performing self-inspections, identifying risk exposures and then developing a plan to mitigate or eliminate the exposure, departments can reduce the potential for costly injury claims and fines for noncompliance with MIOSHA Standards.



The Michigan Municipal League's Risk Management Services (800-653-2483) or Loss Control Services (800-482-0620 ext. 8040) staff is ready to assist you in your risk reduction needs. The Law Enforcement Action Forum (LEAF) continues to develop policies and resource documents designed to help Law Enforcement Executives manage their risk exposure. Do not hesitate to contact us for any additional risk management or loss control needs.

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our reader's are encouraged to consult with their attorneys for specific legal advice.

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