How to Avoid Bloodborne Pathogens Citations when Engineering Controls Aren’t Available

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The OSHA *Bloodborne Pathogens Standard* (BPS) requires the use of appropriate commercially available and safe engineering controls to reduce workers’ exposure to bloodborne pathogens. Employers must document the engineering controls they consider in their Exposure Control Plan (ECP) once a year.

But suppose you decide an engineering control is appropriate and then find out you can’t get the device, for example, because the vendor doesn’t have it in stock? The decision to use the device is sitting in your ECP. So if an injury occurs, an OSHA inspector may review the ECP and fault you for not using the device, especially if it would have prevented or lessened the severity of the injury.

To avoid getting cited in such a situation, you’ll need to be able to prove that the engineering controlling wasn’t available. Here’s how to do that. We’ll also give you model language you can put into your ECP (or adapt to document compliance with other OSHA standards that require engineering controls if those controls aren’t commercially available).

What OSHA Looks For in an ECP

If OSHA investigators review your ECP, they’ll try to determine which engineering controls your safety committee selected. You’ll then have to show either that you’re currently using those controls or have a good reason why you’re not.

According to an OSHA interpretation letter, the fact that the chosen engineering control isn’t commercially available, e.g., because of supply shortages or shipping delays is a valid excuse. But to avoid getting cited for not implementing appropriate engineering controls there must be documentation of the control’s unavailability in the ECP [*OSHA Interpretation Letter*, Feb. 9, 2001]. “It’s just as important for employers to document why they’re not using the engineering control as it is to document the decision to select that engineering control in the first place,” explains a Washington, DC, OSHA lawyer.

How to Document Unavailability of an Engineering Control

The model language below is an example of how to properly document the unavailability of an engineering control. Like ours, your language should document:

- The decision to implement the engineering control (Model Language, first para);
- The efforts you made to acquire the control, e.g., ordering it from the manufacturer (Model Language, second para);
- The fact that the device wasn't available and the specific reasons why (Model Language, second para);
- The company's intention to implement the engineering control immediately once it becomes available (Model Language, fourth para); and
- The interim work practice and/or engineering controls the company will use to minimize workers' exposure until the engineering controls are put into use (Model Lang, fourth para).

Model Language

Here's model language you can insert into your Exposure Control Plan to document that a selected engineering control isn't commercially available. Although based on the Bloodborne Pathogen Standard and OSHA's interpretive guidance, you can use the same approach for other standards that require implementation of engineering controls, e.g., the OSHA Asbestos Standard, if the appropriate controls aren't commercially available.

Engineering Controls

October 7, 2005: The XYZ Company Safety Committee recommended the purchase and implementation of the ABC device to minimize the risk of exposure to infectious materials to workers pouring blood and body fluids during disposal operations.

October 11, 2009: XYZ Company's Safety Director, Bob Jones, ordered six devices from ABC Manufacturing. A representative of ABC notified Bob that the device is currently on back order and will not be available for shipping until February 1, 2005, at the earliest.

October 12, 2009. Bob reported the results of his discussions with ABC to the Infection Control Committee. The Committee decided that Bob should place the order with ABC and request the earliest possible delivery.

At this meeting, the Committee also decided that the ABC devices will be put into immediate once they're received. In the meantime, until the devices arrive, all XYZ Company workers who dispose of blood and bodily fluids will be required to wear double-layered gloves and receive training on techniques to minimize spillage and exposure during disposal operations.

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Bloodborne Pathogens Standard: 29 CFR 1910.1030.
Asbestos Standard: 29 CFR 1910.1001.
OSHA Standard Interpretations Letter, February 9, 2001.