T K Group, Inc.

Newsletter
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OSHA Recognizes Audiologists' Role in Making Work Relatedness Determinations

In a 1983 OSHA interpretation entitled *Positive Determination of Work-Relatedness of Standard Threshold Shift Not Required*, OSHA revoked a requirement that employers determine work relatedness for 10 dB Standard Threshold Shift (STS) events. (Note: At that time, 10 dB shift events qualified for OSHA 200 Log consideration as a Recordable injury). Furthermore, the interpretation stated that while determinations were not required for 10 dB events, certain rare circumstances might require a determination of work relatedness in order to fulfill the original intent of the noise regulation-to protect a worker's hearing. Moreover, this interpretation declared that only physicians were qualified to make determinations since only they were considered capable of rendering legal/medical diagnoses.

In the twenty-four years since that 1983 interpretation, the Audiology profession realized staggering evolution and autonomy. Persons entering the profession of Audiology today require a doctoral level degree (A.uD. or Ph.D.) at minimum to become an Audiologist. Opinions of doctorate-level Audiologists are now accepted as expert witness testimony in courts of law. Audiologists have for quite some time performed OSHA-related Work Relatedness Determinations pursuant to CFR 1904 which states "If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, you are not required to consider the case work-related or to record the case on the OSHA 300 Log." [1904.10(b)(6)].While unspoken but generally understood, an Audiologist's expertise fell under the "other" licensed healthcare professional category. As such, Audiologists have made determinations for quite some time now because that skill is clearly within an Audiologist's accepted and expected umbrella of professional service capability. Nevertheless, the 1983 interpretation (still posted on the OSHA interpretations website to this day) served to generate some degree of uncertainty for some.

In a recent interpretation entitled *Clarification of*

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A Special Request to Those Sending Data to T K Group

Clients of T K Group may send test data to Rockford for analysis and reporting by email, fax, or US postal.

T K Group kindly requests that "senders" refrain from submitting duplicate data transmissions (e.g. sending identical data both electronically *and* by fax and/or US postal).

When duplicate "data sends" are made, turnaround time may be delayed since data processors

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Inside this issue:

OSHA Recognizes Audiologists' Role in Making Work Relatedness Determinations (continued)

1910.95 and 1904 Regarding Physician's and audiologist's roles in Determining Work-Relatedness of Worker Hearing Loss, OSHA officially recognizes and accepts Audiologists as those capable of rendering Work Relatedness Determinations associated with CFR 1904 (Recording and Reporting Occupational Injuries and Illnesses).

The interpretation differentiates determinations associated with 29 CFR 1910.95 (The Hearing Conservation Amendment) versus CFR 1904 and states "employers may seek and consider the guidance of an audiologist or other licensed health care professional when evaluating the work-relatedness of hearing loss (for purposes of CFR 1904 compliance), provided the health care professional is operating within the scope of their state license or certification".

The recent interpretation makes the following clarification: pursuant to the OSHA noise standard (29 CFR 1910.95), a physician determination is required when/if it must determined that a 10 dB Standard Threshold Shift (STS) (not to be confused with a potentially OSHA Recordable event under CFR 1904) is work-related. Under the original intent of the OSHA standard, an occupationally related physician determination served to prompt the employer to initiate mandated follow-up actions in response to an identified 10 dB STS (i.e. mandatory use of hearing protection, check/re-fit hearing protectors, supplemental training). Since there is no mandate under 29 CFR 1910.05 to determine work-relatedness for 10 dB shift events, few employers seek determinations for 10 dB shift events; additionally, most employees receiving an annual hearing test are already in the Hearing Loss Prevention Program.

Physician involvement is crucial in any Hearing Loss Prevention Program. As per customary T K Group protocols, the reviewing audiologist issues both Medical Referral recommendations and Medical Referral Advisories when audiometric characteristics are consistent with potential pathology. When issued, referral recipients are urged to seek physician consultation to determine if a medically related condition exists.

It is inappropriate for any health care professional to suggest firm diagnosis in the absence of direct and hands-on evaluation/clinical testing. When the reviewing T K Group Audiologist observes any "problem" audiometric configuration, a referral is issued to suggest the presence of potential underlying pathology.

T K Group looks forward to continued administration of Work Relatedness determination services.

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August 29, 2007

Theresa Y. Schulz, PhD
VA Medical Center, James H. Quillen
P.O. Box 344
Fall Branch, TN 37656

Dear Dr. Schulz:

Thank you for your November 30, 2005 letter to the Occupational Safety and Health Administration (OSHA) concerning the Injury and Illness Recording and Reporting Requirements contained in 29 CFR Part 1904. Please accept my apology for the delay in our response. Your letter requested guidance related to what you saw as a conflict between 29 CFR 1910.95, the OSHA Occupational Noise Exposure Standard (OSHA Noise Standard) and 29 CFR 1904, the OSHA Occupational Injury and Illness Recording and Reporting Requirements (OSHA Recordkeeping Regulation) as they

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AN IMPORTANT AND EXCITING ANNOUNCEMENT IS NEARING. STAY TUNED 1ST QUARTER 2008!

A Special Request to Those Sending Data to T K Group (continued)

must meticulously breakdown each batch of data to determine if both sets of data are identical.

Additionally, and unless otherwise requested, T K Group asks that retest data not be sent via email to Dr. Robert Williams, but rather to datacenter@tkontheweb.com as this will foster "turn-key" processing of data.

The following data send options are available:

1. Electronic: datacenter@tkontheweb.com
2. FAX: 815.972.1143

US Postal; Please mail data the following address:

T K Group, Inc.

308 W. State St.

Rockford, IL 61101

Attention: Data Processing

T K Group thanks you for your cooperation!

Volume Safeguard in Sight for iPod?

In the 2nd Quarter 2006 Newsletter, T K Group reported emerging concern for risk of noise-induced hearing loss associated with use of personal music listening devices (i.e. iPod and similar platforms) in an article entitled *Personal Music Listening Devices and Hearing Loss*.

In a recent article, it is reported that Apple Corporation may in the future offer iPods that possess an automatic volume control (The Daily Mail; *Apple to Launch iPod with Automatic Volume control that can Protect your Hearing).*

While details are sketchy, the report states that Apple Corporation may have patented a process whereby future iPods may automatically monitor the intensity and duration at which the listener is using the device; as risk levels increase, the device would automatically lower intensity. Additionally, the device would have the capability to monitor the interval of "quiet" or "down" time between uses.

If this concept sounds familiar, it no doubt follows the principal of "dose" exposure in the OSHA noise standard.

Documented research clearly correlates not only (noise) intensity with noise induced hearing loss but duration of exposure as well. These principals are the foundation of Permissible noise exposures (Permissible Exposure Limit-PEL) and Exchange rate concepts in the OSHA noise standard.

The OSHA PEL (unprotected) is set to 90 dB in an 8 hour time period-considered a

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ATTENTION!

In an effort that we provide this newsletter electronically as well as to inform you of immediate professional announcements, please email us your email address to: robertwilliams@tkontheweb.com

T K Group News is written by Dr. Robert Williams, Audiologist Director Audiology

T K Group conducts periodic CAOHC Certification and Recertification courses. Our next course is July 9-11, 2008. If you wish to participate, please contact Beth Minnick at (815) 964-5445

CAOHC

OSHA Recognizes Audiologists' Role in Making Work Relatedness Determinations (continued)

pertain to the issue of the roles of physicians and audiologists in determining that a worker's hearing loss case is not work-related.

OSHA's Noise Standard

The OSHA Noise Standard, 29 CFR 1910.95, applies to all employers with employees covered by the Occupational Safety and Health Act of 1970 (OSH Act), except those in construction, agriculture, and gas well drilling and servicing. See 46 Federal Register 42622. Paragraph (c) of the standard requires employers to establish a hearing conservation program for all employees whose exposure is equal to or above 85 decibels (dB) measured as an 8-hour time-weighted average (TWA) (the action level). Paragraph (d) requires employers to conduct monitoring to determine which of their employees are at or above the action level and to enable proper selection of hearing protectors. Employees exposed at or above the action level must be notified of their noise exposure level, and an audiometric testing program must be made available to all employees to monitor their hearing over time. See 29 CFR 1910.95(e) and 1910.95(g)(1).

Paragraph (g)(6) of the standard provides that employers must provide employees exposed at or above the action level with an annual audiogram to determine whether the employee has sustained a Standard Threshold Shift (STS). An STS is defined in paragraph (g)(10) as "a change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more at 2000, 3000 and 4000 hertz (Hz) in either ear." If there has been an STS, paragraph (g)(8) requires the employer to take certain follow-up measures, including fitting the employee with hearing protectors, training the employee in the use and care of hearing protectors, and requiring the employee to use the protectors.

Additionally, paragraph (g)(8)(ii) provides that the employer shall ensure that a number of steps are taken when a standard threshold shift occurs, unless a physician determines that the standard threshold shift is not work related or aggravated by occupational noise exposure. Thus, paragraph 1910.95(g)(8)(ii) is clear that, for purposes of OSHA's Noise Standard, only a physician can make the determination that a standard threshold shift is not work-related. As a result, employers would not be required to initiate the follow-up procedures set forth in paragraph 1910.95(g)(8) if a physician determines the STS is not work-related, i.e., neither caused by or contributed to occupational noise exposure.

OSHA's Recordkeeping Regulation

The OSHA Recordkeeping Regulation applies to all employers with employees covered by the OSH Act, although some employers are not required to keep injury and illness records if they have ten or fewer employers or have establishments in certain low hazard industries. Section 1904.10(a) of the regulation provides that employers must record work-related hearing loss cases when an employee's audiogram reveals an STS in hearing acuity, as defined in the OSHA Noise Standard, and when the employee's overall hearing level is 25 dB or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS. Furthermore, Section 1904.10(b)(5) of the OSHA Recordkeeping Regulation requires an employer to consider a case to be work-related only when exposure at work either caused or contributed to a hearing loss, or significantly aggravated a pre-existing hearing loss. The section also states that there are no special rules contained in the recordkeeping system for determining whether an employee's hearing loss is work-related, but that employers must use the same rules contained in Section 1904.5 when making work-related determinations for any and all employee injury/illness cases, including hearing loss cases. Among other things, Section 1904.5 provides that the decision as to whether an injury or illness is work-related is ultimately the responsibility of the employer, and that every work-related determination must be evaluated on a case-by-case basis.

The OSHA Recordkeeping Regulation allows an employer to seek and consider the guidance of a physician or licensed health care professional when determining the work-relatedness of any worker injury or illness case.

Section 1904.10(b)(6) emphasizes the fact that an employer may consider an employee's hearing loss case to be non work-related if a physician or other licensed health care professional determines the

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OSHA Recognizes Audiologists' Role in Making Work Relatedness Determinations (continued)

hearing loss is not work-related under section 1904.5. While the OSHA Recordkeeping Regulation has always contained a presumption of work-relatedness for cases occurring in the work environment, this presumption can be rebutted if it meets any of the exceptions contained in 1904.5(b)(2). For example, if an employee in a high-noise work environment meets the recording criteria for hearing loss, but a physician discovers that the employee has an inner ear infection that is entirely responsible for the loss, the case would not be considered work-related. (See 1904.5(b)(2)(ii).

Subpart G of the Part 1904 regulation defines the term quothealth care professional" as follows:

a physician or other state licensed health care professional whose legally permitted scope of practice (i.e. license, registration or certification) allows the professional independently to provide or be delegated the responsibility to provide some or all of the health care services described by this regulation. The use of the term "health care professional" in Part 1904 is consistent with definitions used in the medical surveillance provisions of several OSHA standards. 66 Federal Register 6078. Although Part 1904 does not specify what medical specialty or training is necessary, the definition of health care professional is intended to ensure that those professionals performing diagnoses, providing treatment and providing input for employer determinations about the recordability of certain cases are operating within the scope of their license, as defined by the appropriate state licensing agency.

Discussion

Employers must comply with OSHA's occupational noise standard at 29 CFR 1910.95 in monitoring employee exposure to occupational noise and in providing a hearing conservation program to reduce employee exposure to that hazard. Employers must also comply with the requirements of 29 CFR Part 1904 in determining whether recordable injuries or illnesses have occurred and entering these on the OSHA Form 300, the Log of Work-Related Injuries and Illnesses (OSHA Log). While both sets of OSHA requirements involve determinations concerning whether an employee's hearing loss is occupational or not, these determinations are made for different purposes, and in compliance with different sets of OSHA requirements.

Based on the language in Section 1904.10(b)(6), for purposes of deciding whether a given instance of hearing loss should be included on the OSHA Log, an employer may seek the guidance of either a physician or other licensed health care professional as to whether a given hearing loss case is work-related. for purposes of the OSHA Recordkeeping Regulation, and unlike OSHA's Noise Standard, employers are not limited to only guidance provided by a physician when deciding whether a hearing loss is work-related. An audiologist could be considered a health care professional under the OSHA Recordkeeping Regulation and may be consulted for determining hearing loss work-relatedness for purposes of maintaining the OSHA Log, provided such individual is operating within the scope of their state license or certification when they make such decisions

The provision in Section 1904.10(b)(6) allowing employers to seek and follow the guidance of a physician or other licensed health care professional to determine whether or not hearing loss is work-related for recordkeeping purposes has no effect on the requirements in paragraph 1910.95(g)(8)(ii) of OSHA's Noise Standard. The definition of "health care professional" in Subpart G of Part 1904 relates only to the recordability of instances of hearing loss on the OSHA Log. It does not modify any OSHA standards or other OSHA regulations that require decisions to be made by a physician. OSHA has stated that it was not the Agency's intention for the use of the term "health care professional" in Part 1904 to modify or supersede any requirement in other OSHA standards or regulations. 66 Federal Register 6079. In fact, none of the injury and illness recordkeeping requirements in the Recordkeeping Regulation alter the obligations, definitions, or procedures contained in OSHA's Noise Standard. Employers are still required under the Noise Standard to have a physician make the determination that an employee's hearing loss is not work-related. Again, please keep in mind that under the OSHA Recordkeeping Regulation, employers are ultimately responsible for determining whether an injury or illness is work-related.

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OSHA Recognizes Audiologists' Role in Making Work Relatedness Determinations (continued)

However, for purposes of OSHA injury and illness recordkeeping, employers may seek and consider the guidance of an audiologist or other licensed health care professional when evaluating the work-relatedness of hearing loss, provided the health care professional is operating within the scope of their state license or certification.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards and regulations. Section 8(c)(2) of the Occupational Safety and Health Act of 1970 (OSH Act) authorizes OSHA to issue regulations requiring employers to make and maintain accurate records of work-related injuries and illnesses. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. In addition, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at http://www.osha.gov. If you have any further questions, please contact OSHA's Office of Statistical Analysis at (202) 693-1875.

Sincerely,

Keith L. Goddard, Director
Directorate of Evaluation and Analysis

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Volume Safeguard in Sight for iPod? (continued)

a dose of 100%. Unprotected noise exposures at this level and duration are considered fairly safe not to sustain noise-induced loss (although we do know that lesser exposure durations and intensities may still damage hearing). The OSHA PEL carries with it a "5 dB exchange rate. As such, every 5 dB increase in intensity should result in exposure time reduced by half. A 95 dB exposure carries permissible exposure duration of four hours; 100, two hours, 105, 1 hour, etc.

Updates to this story will follow as more information becomes available.

A Year's End HLPP Review May be Worth Your Time

(Note: This is a reprint of an article originally published in our 4th Quarter 2006 Newsletter. While it's an oldie, it's also a goodie. Now is good time to review 2007 reports so that no compliance oversights go unaddressed.

At year's end or within the first two weeks of a new year, it is a good time to affirm that you have fulfilled compliance in response to actionable events associated with your Hearing Loss Prevention Program.

Arguably, the greatest challenge in maintaining an effective and compliant Hearing Loss Prevention Program is records management and documentation.

Many a citation has been levied not from failure to test annually, but failure to "cross your T's and dot your I"s" on paper in response to actionable shift events.

If new hires have occurred throughout the year, it is wise to check your records to ensure that a baseline test was conducted within six months of the hire date-if they work in 85 dB (or greater) environment. If your company uses our mobile testing service, OSHA waives the six month requirement as long as a valid baseline test is secured within 12 months of hire; appropriately attenuating hearing protection must however be in use. The clerical requirements of actionable 10 dB Standard Threshold Shift (STS) and potentially OSHA Recordable Shift events are clear. Mandated follow-up in response to identification of a 10 dB STS requires written notification of the event within 21 days of determination/notification. If for some reason a retest is not conducted, or when a shift is confirmed by retest, additional training must be conducted and documented to assure proper protective practices and appropriate protector fit and insertion.

Potential OSHA Recordable events also require clerical oversight. If a 30 day retest is not attempted or anticipated in response to a Recordable event, and/or an event is confirmed (or shown to be be persistent), that event must be posted to the OSHA 300 log form within 7 days of notification or knowledge of the STS.

In the event that a year's end review does in fact reveal unresolved clerical issues, the adage "better late than never" certainly applies. Take comfort in knowing that T K Group can provide replacement documentation (i.e. notification letters, determinations, etc) if for some reason documents are misplaced.

As discussed in an article entitled *Persistent and Non-Persistent Test Outcomes* in the 3rd Quarter 2006 Newsletter, T K Group management reports inform you if a potentially Recordable shift event remains unconfirmed by retest and/or if that event was shown persistent or non-persistent by a latent (non-30 day) retest. In the event that an unconfirmed Recordable event is revealed upon a year's end review, you may conduct what would be considered a "latent" retest to determine if that event is persistent or non-persistent; a non-persistent outcome would allow you to line that event off the 300 log form (assuming that you logged it at the time of initial notification). If you elect not to conduct a latent retest, you may elect to request a Work Relatedness Determination, retrospectively. If a determination deems the event non-work related, a line-off is also permitted.