

COMPARING MEXICAN AND OSHA HEALTH & SAFETY REGULATIONS- PART 1.

As more U.S. health and safety professionals are called upon to assess workplace conditions and compliance at their Mexican facilities, it helps to know how the Mexican and U.S. health and safety regulatory systems compare. In this two-part series, we will explore some of the major similarities and differences in the regulatory frameworks of both countries.

By way of example, let us begin by taking a quick look at how the U.S. federal, California, and Mexican federal regulatory frameworks codify the machine guarding standard in the table below:

| US | CALIFORNIA | MEXICO |
|-----------------------------|--------------------------------|--------------------------------------|
| Code of Federal Regulations | California Code of Regulations | Regulations for H&S in the Workplace |
| Title 29 | Title 8 | Title 2 |
| Part 1910 | Chapter 4 | Chapter 3 |
| Subpart O | Subchapter 7 | Section II |
| | Group 8 | |
| | Article 54 | Article 36 |
| Standard 29 CFR 1910.211 | Title 8 Section 4184 | NOM-004-STPS-1999 |

While the standards share some similarities in hierarchical structure, there is one important difference between the U.S. and Mexican models. The U.S. and California machine guarding standards are contained in the regulations themselves, as indicated by their names. In contrast, the Official Mexican Norm (NOM for its Spanish acronym) regulating machine guarding is a stand-alone standard, which derives from, but is not a part of the actual regulation cited. We will discuss the implications later.

With this basic understanding of the regulatory hierarchies, we can turn our attention to how Mexican health and safety regulations are administered.

Mexico's Federal Labor Law and Social Security Law are the main statutes regulating work place conditions in the country. Individual states implement these laws through accords with the federal government. The federal agency responsible for labor issues in Mexico is the Secretariat of Labor and Social Welfare, or STPS. It issues the Regulations on Health & Safety in the Workplace as well as specific Official Mexican Norms, which are equivalent to rules or standards.

According to Mexican Labor Law, the employer must provide worker training, comply with all health and safety rules, and adopt all measures necessary to prevent accidents in the use of machinery and materials.

Workers also have a number of rights under the Social Security Law. These include; full medical insurance for worker and family, worker's compensation insurance, vacation and retirement, severance pay, and access to an Arbitration and Conciliation Board for handling grievances.

The Worker's Compensation (WC) system in Mexico is administered by the Mexican Social Security Institute (IMSS), a national, state-run, health maintenance and social security organization. Employers pay annual worker's compensation premiums based on loss experience from lost work days, disabilities, and fatalities over the previous 12 months, subject to an annual modifier. The WC premium is the modifier plus a minimum 0.25% of the quoted base wage, up to a maximum of 15%, depending on industry type. The minimum wage in Mexico is approximately \$5.00 (US) per day before benefits.

Regulations and standards are issued by STPS. They are developed by committees with representation from industry and employer groups, unions, academic institutions, and technical experts. The laws and regulations are enforced by STPS's federal inspectors or by state or municipal Labor Departments, under agreement with STPS.

Among the employer's obligations are to comply with health and safety rules, secure all required permits and authorizations, conduct studies to identify possible causes of accidents and illnesses in the workplace, and adopt the necessary preventive measures to ensure a safe workplace for employees. Other specific obligations include providing onsite medical services to workers, preparing specific health & safety programs and manuals, giving notice to STPS of all accidents, allowing STPS to conduct regulatory inspections, organizing a Joint (worker-management) H&S Commission, and informing workers of the risks they are exposed to in the workplace.

Failure to comply with regulations may result in fines ranging from 15 to 315 times the minimum wage, which may be doubled for repeat offenders. STPS may also order partial or total temporary shutdown of a workplace until health and safety conditions are met.

The Official Mexican Norms are the specific work place rules issued to ensure compliance with Mexican labor laws and regulations. NOMs do not have to be approved by the legislature. Federal government agencies have the jurisdictional authority to develop and issue NOMs applicable to their jurisdictional areas. This gives the Mexican system flexibility in terms of updating, modifying or eliminating standards without affecting the overarching regulations.

Prior to 1993, there were approximately twenty standards (which were called "Instructions") regulating a wide range of health and safety issues in the workplace. Regulatory development increased in 1993, so that by 1997 there were 116 NOMs. More recently, a regulatory streamlining process has been underway, such that currently there

are 36 active NOMs divided into safety, health, work place organization, safety products, and specific activities. By 2001 the number will decrease to 29 NOMs.

NOMs under development, which will form part of the final number, include safety management for high hazard activities, preventive workplace health services, forestry and lumber operations, welding and cutting, and railroad operations and maintenance.

How similar are NOMs and OSHA Standards? Next month we will continue this article with a closer look at the content of some standards to see how compatible their requirements are, and we'll discuss Mexico's regulatory enforcement mechanisms.

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