

Even if an employee's injury arises from his own negligence, the employer can still be held responsible for violating OSHA where the employee's negligence is foreseeable by the employer either because of the employer's prior experience or knowledge of special facts and where demonstrably feasible measures existed to prevent such employee injury. In previous cases, employers have been found in violation of OSHA where an employee's death could result from lack of adequate training and supervision in the safe operation of unique heavy machinery. Under this reasoning, farm employers can be in violation of OSHA if they fail to train employees in the proper handling of pesticides, even if an injury has not yet resulted. The employer in this situation also may be in violation of the FIFRA.⁵

In addition to, and in conjunction with, the general duty of care, each employer covered by OSHA must comply with any and all relevant and applicable safety and health standards issued under OSHA's authority. Federal regulations promulgated under OSHA set forth a wide range of safety and health standards.

There are not a wide variety of standards applicable to agricultural operators⁶ or specifically to pesticide related operations. There are no standards on the use of protective clothing. The duty of farm employer's in these uncovered areas will be set by the general duty of care mandated by the Act. This means that farm employers when engaged in certain farming practices need not follow a set series of steps to comply with OSHA. Instead, farm employers in these circumstances are bound by a reasonableness standard—did the employer take all reasonable steps necessary and feasible in eliminating or minimizing recognizable hazards? This question as framed by a court of law would ask: Did the employer do what a reasonably prudent person would do under similar circumstances?

Any employer may apply to the Secretary of Labor for a variance from a standard if compliance with such standard is too burdensome due to the unavailability of professional or technical personnel or equipment.⁷

Farm employers must make and preserve records of their activities relating to OSHA. These records must be available to the OSHA enforcement officials upon request. Basically, records must contain information on any farm related accidents or existing or potential hazardous conditions other than minor injuries not requiring medical treatment, loss of consciousness, restriction of work, or transfer to another job. Causes and preventative steps (if any taken) must also be incorporated within the records. Other requirements include an annual summary, supplementary records and the reporting of fatality or multiple hospitalization accidents. Additionally, farm employers may be required to maintain records of farm employee exposure to potentially toxic materials, which may include pesticides, or to harmful physical agents.

Farm employers with ten or fewer employees at anytime during the prior calendar year, need only report within 48 hours after occurrence of fatal accidents and/or those involving hospitalization of five or more employees. These "small" employers must also maintain a log of occupational injuries and illnesses.⁸

Inspection and Investigation.

To ensure compliance with OSHA, the Secretary of Labor, his representative or state enforcement officials are authorized to enter farms and inspect and investigate farming operations. These officials may write citations for observed violations of OSHA (see Penalties for Violation).