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**Indoor Air Quality and Employment:
Problems, Considerations, and Solutions**

- I. Common legal issues related to indoor air quality problems and the employer-employee relationship
 - A. Employee health problems
 1. Accommodations/ADA claims: state and federal law prohibit discrimination against qualified employees with disabilities
 - a. Definition of disability
 - 1) a physical or mental impairment that substantially limits one or more major life activities, or a record of such an impairment
 - 2) examples of IAQ-related conditions that might constitute a disability: asthma; hypersensitivity pneumonitis; some allergies
 - b. Employer must provide reasonable accommodation to a qualified disabled employee who requests one
 - 1) Disabled employee is qualified if s/he can perform the essential functions of his/her position with or without a reasonable accommodation
 - 2) What is a “reasonable” accommodation? Factors that may be considered:
 - a) size and resources of the employer’s business;
 - b) type of employer’s operation, including the composition and structure of the workforce (and terms of any collective bargaining agreements);

- c) nature and cost of the accommodation;
- d) whether furnishing the accommodation will prevent the employer from providing service required by and in compliance with state or federal law or regulations; and
- e) whether providing the accommodation will unduly compromise the health or safety of the public

3) Examples of reasonable accommodations:

- a) making existing facilities readily accessible to an individual with a disability, including relocating and employee or making alterations in the employee's work area
- b) job restructuring by reallocating or redistributing marginal job functions
- c) altering when or how an essential job function is performed
- d) modifying work schedules
- e) reassignment to a vacant position
- f) acquiring or modifying equipment or devices
- g) permitting use of accrued paid leave or unpaid leave for necessary treatment
- h) providing reserved parking for a person with a mobility impairment
- i) allowing an employee to provide equipment or devices that an employer is not required to provide

2. Workers' compensation claims

- a. Exclusive remedy for employee injuries vs employer (i.e., employee cannot sue employer for negligence)
- b. Impact of pre-existing conditions: pre-existing health condition aggravated by workplace is compensable injury if it disables employee or impairs earning capacity
- c. Claimant's burden of proof

- d. Benefit amounts are based on a multiple of the state's average weekly wage; no compensation for pain and suffering
- 3. Issues related to medical information
 - a. Disclosure of employee medical information -- should be limited to those with a need to know
 - b. Employer medical evaluations to confirm illness / disability – allowed
 - c. Fitness for duty exams -- generally allowed
- B. Employee rights / employer responsibilities
 - 1. National Labor Relations Act
 - a. Employee complaints about indoor air quality conditions are “concerted, protected activity”
 - b. Health & safety committees are “concerted, protected activity”
 - c. Retaliation against employee for participation in concerted protected activity is prohibited -- “but for” test
 - 2. Occupational Safety & Health Act
 - a. Application of Air Contaminant Standards (Z Table)
 - b. Recordkeeping requirements
 - 1) Material Safety Data Sheets (MSDSs)
 - 2) Employee exposure records and IAQ reports
- C. Rights to information / rights to inspect premises (workers' compensation; OSHA)
- D. Special issues in unionized workplaces
 - 1. Collective bargaining agreements: health and safety is a mandatory subject of bargaining
 - 2. Rights to information
 - 3. “Employer domination” of employee organization prohibited
- E. Special issues in public sector workplaces

- II. How to prevent legal issues from occurring
 - A. Prevent IAQ problems from occurring
 - B. When IAQ problems do occur, respond quickly and completely
 - C. Share information / consultants
 - 1. The lure of undisclosed information
 - 2. Characterizing/summarizing information vs. getting information from the original source
 - 3. Record keeping