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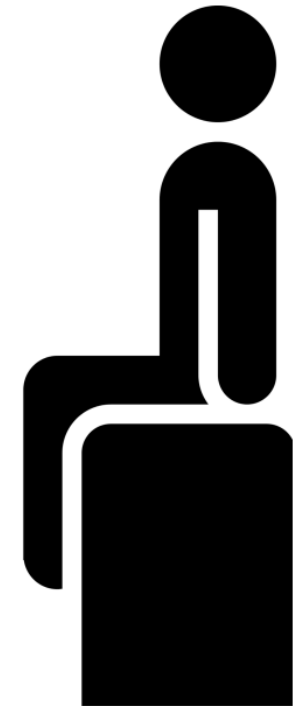
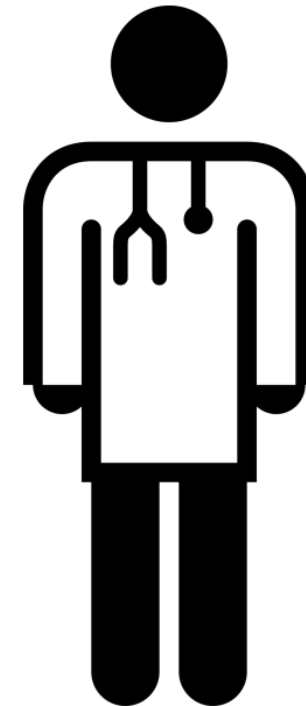
Asbestos Abatement Regulations, 2020

17. Medical Surveillance

01 February 2021
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- ▲ Background (what the Committee wanted to achieve)
- ▲ Criteria for doing medical surveillance
- ▲ A documented system of medical surveillance
- ▲ A Certificate of Medical Surveillance
- ▲ Return to work clearance
- ▲ Administrative employer duties





- ▲ Better alignment with the current HCS (HCA) Regulations
- ▲ Better links between the *exposures*, the *medicals* and the *management of outcomes* – a “**system**”
- ▲ Give more attention to **who** must be under surveillance
- ▲ Place the **responsibility** on an Occupational Medicine Practitioner to set out the details of how the system should work – who must be appointed to **document** the process (written procedure / code of practice)
- ▲ Recognition that the main **purpose** is “**surveillance** for early occupational disease”, (hence the new term “**certificate of surveillance**”) but that there is also a “**fitness to work**” component



17. (1) An employer must establish and maintain a system of medical surveillance of employees if—

- (a) the employer is registered as an asbestos contractor;
- (b) in the opinion of an occupational medicine practitioner, after consideration of the results of the asbestos risk assessment carried out in terms of regulation 5(5)(d), it is reasonably likely that an asbestos-related disease may occur under the particular conditions of an employee's work; or
- (c) an occupational medicine practitioner recommends that the relevant employee should be under medical surveillance.

"registered asbestos contractor" means either a contractor, a mandatory or an employer who conducts type 2 asbestos work or type 3 asbestos work or asbestos removal work, who is registered with the chief inspector;

(d) if exposure risk indicates that the OEL may be exceeded, an indication that the employer must obtain the services of an occupational medical practitioner to fulfil the requirements of regulation 17(1)(b).



(2) In order to comply with subregulation (1), an employer must appoint an occupational medicine practitioner to document the system of medical surveillance of employees, including—

(a) consideration of—

- (i) the risk of developing occupational asbestos-related diseases; and
- (ii) medical fitness to work requirements, including fitness to wearing a respirator;

The key issues to be addressed by the document to include:

- (2)(a)(i) Medical testing (screening) for the emergence of early **adverse effects of asbestos exposure**
- (2)(a)(ii) Medical **fitness to work adjudication** relating to the inherent requirements of the job, such as the wearing of a respirator, or specific vulnerability such as the presence of pre-existing lung disease that might warrant restrictions relating to performing asbestos work

The Documented System of Medical Surveillance (2)



(2) In order to comply with subregulation (1), an employer must appoint an occupational medicine practitioner to document the system of medical surveillance of employees, including—

- (b) an initial health evaluation before commencement of asbestos work, which comprises—
 - (i) an evaluation of the employee's medical, occupational, exposure and social history;
 - (ii) an appropriate physical examination;
 - (iii) a chest radiograph; and
 - (iv) any other additional medical examination, such as pulmonary function testing, which, in the opinion of the occupational medicine practitioner, is necessary to enable such practitioner to perform an appropriate health evaluation;

The Documented System of Medical Surveillance (3)



(2) In order to comply with subregulation (1), an employer must appoint an occupational medicine practitioner to document the system of medical surveillance of employees, including—

(c) periodic health evaluations conducted, considering medical tests contemplated in subregulation (2)(b), at intervals determined by subregulations (2)(a) and 4(b);

A suitable interval depends upon factors relating to:

- **exposure** risk (including the *levels* of exposure as well as the *years* of exposure)
- **medical fitness** (eg to wear a respirator, or the presence of a *pre-existing vulnerable condition*)

These factors cannot be prescribed in these regulations – hence this places a burden on the OMP to apply professional judgement.

The Documented System of Medical Surveillance (4)



(2) In order to comply with subregulation (1), an employer must appoint an occupational medicine practitioner to document the system of medical surveillance of employees, including—

(d) the duties of an occupational health practitioner, conducted under the direction of the appointed occupational medicine practitioner;
and

This highlights the ***important working relationship*** which has always existed between the Occupational Medicine Practitioner (OMP) and the Occupational Health Nurse Practitioner (OHNP).

In this setting, the OMP is **responsible** for the design of the system, and the execution of the medicals, but the OHNP has an important role to play, such as:

- Performing certain clinical screening tests prior to the OMP's systematic clinical examination
- Performing the spirometry
- Administrative duties, such as arranging radiographs, coordinating referrals, scheduling follow ups, assisting in admin related to compensation claim submissions



(2) In order to comply with subregulation (1), an employer must appoint an occupational medicine practitioner to document the system of medical surveillance of employees, including—

(e) making the documented system of medical surveillance available to the health and safety representative or health and safety committee, who is entitled to further clarification, if they so request.



(3) The appointed occupational medicine practitioner must notify the employer in writing of the outcomes of the health evaluation by issuing the certificate of medical surveillance, subject to the following:

- (a) The information provided to the employer is limited to the presence of an occupational disease and the fitness of the employee to perform the inherent requirements of the job, and may not include confidential medical information;
- (b) the employee is informed of the outcome of the health evaluation; and
- (c) an employee is assessed to be temporarily medically unfit to perform work if there is a reasonable expectation that the employee's health will improve, and that such employee will be able to return to work.



(4) An employer may not permit an employee who was certified by an occupational medicine practitioner as medically unfit to work in a regulated asbestos area: Provided that the employee may return to perform that work after being certified fit by an occupational medical practitioner, and after—

- (a) being informed of the results of the exposure assessments; and
- (b) being prescribed medical tests in the frequency they should be repeated based on the risks.

3 criteria for RTW:

- certified medically fit by an OMP,
- the employee is appraised of the exposures plus
- the ongoing test frequency for that employee (this may alter because of the underlying condition that made the employee unfit).

Regulated asbestos area

18. An employer or self-employed person undertaking type 1, type 2 or type 3 asbestos work must—

- (a) clearly demarcate and identify the relevant area as a regulated asbestos area in accordance with regulation 20; and
- (b) ensure that no person enters or remains in a regulated asbestos area unless he or she wears the appropriate type and correctly fitting respiratory protective equipment and protective clothing as contemplated in regulation 19.



- (5) The certificate of medical surveillance, as contemplated in subregulation (3)—
 - (a) must be provided by the employer to the employee upon termination of employment; and
 - (b) may be used for subsequent asbestos work for the full duration of its validity period.

Certificate of Surveillance to be useable for the *duration of its validity*, beyond a single employer / contract.

This avoids unnecessary medicals being performed just because a worker moved from one contractor to another. This can happen several times a year.



(6) The employer must record, investigate and report the occupational disease contemplated in subregulation (3)(a) in compliance with section 25 of the Act and regulation 8 of the General Administrative Regulations, 2003.

(7) An employer must ensure that the employee provides written informed consent for inclusion in the medical surveillance programme, which forms part of the medical surveillance record.

The inclusion of consent is new.

The committee recognises that consent is already enshrined in various places including the National Health Act, so is arguably not completely necessary here, but it was included because the committee wanted to point out that in terms of these regulations, obtaining consent is actually a **duty of the employer**, not the OMP.



Thank you for your attention

Questions / Discussion