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News for School and Municipal Clients

New Lead-Safe Regulations for Conducting Renovations

On April 22, 2010, regulations designed to protect young children from lead paint hazards that may be left behind after renovation work went into effect. The regulations, promulgated by the Wisconsin Department of Health Services (“DHS”), require persons who engage in renovation activities in “target housing” and “child-occupied facilities” built before 1978 to comply with the new lead-safe renovation provisions mandating training, certification, and lead-safe work practices. “Renovation” is defined as a work activity that disturbs paint in or on target housing or a child-occupied facility. Renovation includes cutting, drilling, planing, sanding, sawing, scraping, stripping or removing painted surfaces or components during demolition, interim controls, maintenance, modification, painting, rehabilitation, remodeling, repair, re-siding, roofing or restoration activities. The new regulations expand the role of the DHS in regulating work with lead-based hazards, which formerly covered only lead abatement (that is, the permanent removal of lead-based hazards) and investigations to determine whether lead hazards were present in a facility.

The regulations define “child-occupied facilities” as buildings, parts of buildings, common areas, and grounds of buildings housing licensed day-care facilities, public or private preschools, or schools attended by

children under six years of age. They also include buildings or portions of buildings visited by the same child under the age of six on at least two different calendar days per week, for at least three hours per visit, for a total of at least 60 hours annually. Many schools and municipal buildings containing child care facilities are considered “child-occupied facilities” for purposes of this rule. “Target housing” includes all dwellings constructed prior to 1978, except for those (a) occupied by the elderly or persons with disabilities, unless a child under six years of age resides or is expected to reside in the dwelling; or (b) those dwellings in which the living area is not separated from the sleeping area.

The regulations exclude from coverage minor repair and maintenance activities. These are activities that disrupt less than six square feet of painted surface in a single room indoors, or less than 20 square feet of painted surface outdoors when no work practices prohibited by the regulation are used. Window replacement and demolition are always regulated regardless of size.

Individual Certifications. Persons performing renovation tasks covered by the regulations must comply with the certification requirements set by the DHS rules, just as persons involved in lead abatement and investigation are currently

required to do. Every renovation project must have a designated, certified “lead-safe renovator” in charge. The certified renovator must provide on-the-job training to all uncertified workers; be present during posting of warning signs, set-up of work area containment, and final clean-up; and must personally conduct final cleaning verification before allowing others into the work area.

For individuals to obtain certification as a lead-safe renovator, they must complete a 1-day lead-safe renovation training course from a DHS-accredited training provider, then apply to DHS for certification. Applicants for certification must be at least 18 years of age. Municipal and public school employees, who must be certified as part of their work, are exempt from the fees normally charged for certification.

Other Certifications. Municipalities and school districts that conduct regulated renovations must be certified as lead-safe companies. Those seeking certification must: (1) complete the application form; (2) agree to employ or contract with appropriately certified or trained individuals for regulated activities; (3) agree to follow appropriate lead-safe work practice standards; (4) maintain records required under the regulations related to abatement, investigation, or renovation activities conducted; and (5) have an employee who demonstrates appropriate knowledge of the lead-based paint regulations and protocol.

Municipalities and school districts are exempt from the company certification fee.

Lead-Safe Work Practices. The DHS regulations require the use of lead-safe work practices when disturbing paint in pre-1978 housing and child-occupied facilities. Implementation of these work practices entails proper containment of work areas, use of safe practices during, and proper clean-up after, each project to ensure that occupants of the building are protected and lead-based hazards have been appropriately contained or removed. For example, individuals renovating a school covered by the regulations must: (1) in advance of a project, distribute or post information to all parents or guardians of children occupying the facility about the nature and location of the project; (2) post warning signs at the job site; (3) establish a containment zone to prevent dust and debris from escaping the work area; (4) use vacuums equipped with special filters and disposable wet cloths to clean all surfaces in the area at the conclusion of work; (5) have a certified lead-safe renovator verify that the project area has been properly cleaned; and (6) dispose of all lead-contaminated waste from the project in an approved manner.

In addition to complying with the DHS lead-safe work practices, employers must continue to comply with any applicable OSHA regulations regarding the protection of employees from lead hazards. For more information, visit <http://www.dhs.wi.gov/lead>.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

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