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A Quarterly Publication of The Ohio State Bar Association
and Our Members

Issue 56 • Summer 2013

Ohio's Regulation of Demolition or Renovation of Buildings Containing Asbestos

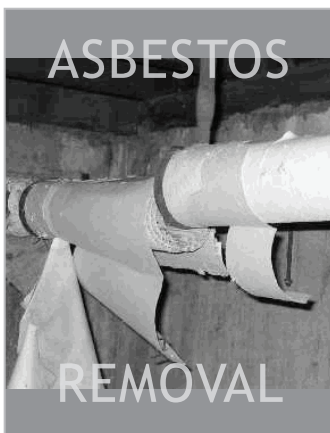
By Joseph Reidy and Nicole Woods

The presence of asbestos in construction materials is now well recognized as a potential health hazard. In Ohio, demolition or renovation of buildings containing asbestos is regulated by the Ohio Department of Health (ODH) under state law and the Ohio Environmental Protection Agency (OEPA) under the federal Clean Air Act. The regulatory programs of these two agencies overlap, so it is important to understand which agency you must work with when conducting certain aspects of asbestos abatement or removal.

OEPA regulations apply to the demolition and renovation of buildings, except for single family homes or buildings with four or fewer dwelling

units. In contrast, ODH regulations are based on the amount of asbestos present in a building, regardless of its use. In early 2012,

OEPA expanded its definition of "asbestos-containing material."



So, even if you were familiar with previous regulations, be sure to read them again.

Before beginning any demolition or renovation, the owner or operator of

a building must have it inspected/sampled for the presence of asbestos. Notification and permitting requirements are then triggered depending on the amount of asbestos that is found. For demolition, OEPA requires notification regardless of the amount of asbestos; for renovation, notification is only required if the amount exceeds

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Ohio Provides Continuing "Mini-COBRA" Coverage for Former Small Business Employees

By Jason Rothman

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) generally provides that certain qualified beneficiaries who lose coverage under an employer-sponsored health plan may elect to continue coverage under the plan in certain situations. COBRA applies to employers with 20 or more employees. Employers with fewer than 20 employees may have to provide employee continuation coverage rights under state continuation coverage law (a.k.a., "mini-COBRA") rather than COBRA.

Q: Who is eligible for coverage under the Ohio continuation law?

A: To be eligible under the Ohio continuation law, an employee must have been: 1) continuously insured under a group policy during the three-month period before termination of employment; 2) involuntarily terminated for reasons other than gross misconduct; and 3) not covered or eligible for coverage under Medicare or other group coverage. An employee should check the terms of the employer's group insurance coverage to determine what continuation benefits the employee is entitled to receive.

Q: How long may coverage last under the state continuation law?

A: Individuals may continue coverage for a period of up to 12 months.

Q: What benefits may be continued under the state continuation law?

A: This continuation coverage requirement covers hospital, surgical and major medical benefits. It also must include prescription drugs if this coverage is included in the group coverage. Continuation need not cover dental or vision care.

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260 linear feet on pipes, 160 square feet on other building components, or 35 cubic feet off building components. Notification to ODH must be made if more than 50 linear feet or 50 square feet of asbestos is to be removed. Even if notification is not required, all asbestos must be properly disposed.

Any individual responsible for removal or abatement of greater than 50 linear feet or 50 square feet of asbestos must be certified by the ODH. This requirement also applies to those responsible for supervising, monitoring, identifying and planning asbestos abatement or removal, and the work is also subject to federal Occupational Safety and Health Administration (OSHA) requirements. Before starting any project, the building owner must enter into a written contract with the asbestos removal or abatement contractor. That contract must list all individuals working on the project and a statement saying that they are licensed and certified, a detailed description of all project activities, and a requirement that all activities will be carried out according to applicable regulations.

Violations of ODH and OEPA requirements carry stiff civil and criminal penalties. For ODH violations, civil penalties can reach \$5,000 per day, and criminal penalties include incarceration of at least a year and at least \$10,000 for the first offense, with escalating penalties for second or subsequent offenses. Civil and criminal penalties for OEPA violations can reach up to \$25,000 per day and can include incarceration. Enforcement for violations by one agency will not necessarily prevent enforcement by the other agency.

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Q: How does an individual elect continuation coverage?

A: The employee must apply within the earlier of:

- 1) 31 days of losing coverage;
- 2) 10 days from the day the employee's coverage would otherwise end if the employee received notice of continuation rights before loss of coverage; or
- 3) 10 days from the date the employee received notice about continuation coverage, if the employee received such notice after losing coverage.

Q: Must Ohio employers with fewer than 20 employees notify employees of the right to continue coverage at the time they are involuntarily terminated?

A: Yes, and this notice must include

If an employer has fewer than 20 employees, those employees may have continuation coverage rights under mini-COBRA.

details of the required monthly payment amount for continuation coverage (including the manner of payment).

Q: What if there is a disagreement about whether a former employee is eligible for group continuation coverage?

A: Former employees may contact the Ohio Department of Insurance (ODI) at (800)686-1526 if they believe the insurance company is not complying with state group continuation coverage rules, or for more information about state continuation law. Information is also available through www.insurance.ohio.gov (search "COBRA").

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Do Non-Compete Agreements Transfer With the Sale or Merger of My Business?

By L. Michael Bly

Protecting the proprietary nature of work product through the use of non-compete agreements is vitally important to business owners and has an impact on the value of businesses. The Supreme Court of Ohio in *Acordia of Ohio, LLC v. Fishel*, 133 Ohio St.3d 356 (2012), clarified the question of whether non-compete agreements can be enforced post-merger. In an earlier decision, when faced with this question, the Court held that non-compete agreements were not enforceable unless they contained language allowing their terms to be transferred to "successors or assigns."

In reversing that decision, the Supreme Court of Ohio held that in accordance with R.C. 1701.82(A)(3) "all assets and property, *including employment contracts and agreements*, and every interest in the assets and property of each constituent entity transfer through operation of law to the resulting company post-merger."

Thus, non-compete agreements negotiated with employees and/or independent contractors will survive a sale or merger and the company acquiring the business will be able to enforce the terms and conditions of those agreements.

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