

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



January 26, 1998

Mr. Ken Broadstreet
Safety and Training Supervisor
Macwhyte Company
P.O. Box 1419
Kenosha, Wisconsin 53141-1419

Dear Mr. Broadstreet:

This is in response to your July 29, 1997, letter requesting compliance assistance from the Occupational Safety and Health Administration (OSHA) concerning the use of a hearing impaired (deaf) forklift operator. We regret the delay in responding to your inquiry.

Your letter expressed your company's concerns with several potential hazards associated with a hearing impaired forklift operator and inquired about OSHA's position concerning the American National Standards Institute (ANSI) standard for Powered Industrial Trucks B56.1, operator qualifications requirements, and the possible use of the general duty clause.

The current OSHA powered industrial truck standard at [29 CFR 1910.178(l)(1)(i)] requires that "~~Only trained and authorized operators shall be permitted to operate a powered industrial truck.~~" (*Correction 02/16/99*) ["The employer shall ensure that each power industrial truck operator is competent to operate a powered industrial truck safely, as demonstrated by the successful completion of the training and evaluation specified in this paragraph (l)."] The standard does not address operator physical requirements. You have pointed out that ANSI standard B56.1, paragraph 4.18, which sets forth operator requirements for powered industrial trucks, would require employers to assure that operators are "qualified as to visual, auditory, and mental ability to operate the equipment safely." OSHA has not incorporated this ANSI requirement as an OSHA standard under section 6 of the Occupational Safety and Health Act (OSH Act).

As you are aware, section 5(a)(1) of the OSH Act, usually referred to as the "general duty clause," requires each employer to provide employment and a place of employment which are free from recognized hazards. OSHA cannot "enforce" a private consensus standard such as the ANSI physical requirements for industrial truck operators under the general duty clause. However, OSHA would consider issuing citations under the general duty clause on a case-by case basis when it could be shown that the use of physically disqualified operators was recognized, by a particular employer or by that employer's industry, as a hazard likely to cause death or serious physical harm to employees. Relevant indicators of recognition might include the extent to which employers in an industry have imposed medical fitness requirements on industrial truck operators; the record of accidents or near-misses throughout industry or at the employer's facility; and the safety recommendations of truck manufacturers, among other factors. The existence of a national consensus standard recommending that operators meet certain physical qualifications would also be a factor in deciding whether a recognized hazard is present.

As you may also know, the Americans with Disabilities Act (ADA) addresses the issue of whether employers may impose physical qualifications upon employees or applicants for employment. In general, the ADA gives employers some latitude to impose medical qualifications when substantial, safety-related reasons for imposing such qualifications can be demonstrated. The ADA specifies that employer actions which are required by other federal law, such as OSHA safety standards or the general duty clause, cannot be the basis for a charge of discrimination under the ADA. The ADA also permits employers to adopt medical qualification requirements which are necessary to assure that an individual does not pose

a "direct threat to the health or safety of other individuals in the workplace," provided all reasonable efforts are made to accommodate otherwise qualified individuals.

In general, OSHA believes an employer's duties under the general duty clause are consistent with his duties under the ADA. The OSH Act requires employers to enforce medical qualification requirements when the failure to do so would create a "recognized hazard causing or likely to cause death or serious physical harm," while the ADA specifies that an employer is allowed to implement such requirements when failure to do so would pose a "direct threat" to health or safety. OSHA will make every effort to be consistent with ADA nondiscrimination principles in enforcing the general duty clause, and in particular, OSHA would encourage employers to explore reasonable accommodations that will allow otherwise-qualified individuals to remain on the job while eliminating threats to the health or safety of others in the workplace.

Thank you for your interest in occupational safety and health. If we can be of further assistance, please contact Wil Epps of my staff at (202) 219-8041.

Sincerely,

John B. Miles, Jr., Director
Directorate of Compliance Programs