



**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT OF LABOR**

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KY OSH PROGRAM INSTRUCTION 02-2006
September 6, 2006

STANDARD

29 CFR 1910.23(c)(1) as incorporated by 803 KAR 2:303

SUBJECT

Protection of Open Sided Floors, Platforms, and Runways

PURPOSE

Clarify and update Kentucky Department of Labor Occupational Safety and Health Program policy in general industry regarding the acceptance of alternative fall protection in lieu of standard railing.

SCOPE

This INSTRUCTION applies only to general industry activities in the Commonwealth of Kentucky. This INSTRUCTION cancels the 1983 Kentucky Department of Labor STANDARDS INTERPRETATION DIRECTIVE NO. 303-23(c)(1)-2 and supersedes OSHA's 1978 STD 01-01-00 (old directive number STD 1-1.7) and OSHA's 2006 06-03 (CPL 02).

INSTRUCTION

Kentucky Occupational Safety and Health Program staff shall use this INSTRUCTION for enforcement and training of 29 CFR 1910.23(c)(1).

POLICY

In general industry, when the utilization of standard railing is infeasible or creates a greater hazard, the Kentucky Occupational Safety and Health Program accepts alternative fall protection in lieu of standard railing when the alternative fall protection is as effective as standard railing.

ACTION

Employers in general industry shall provide standard railing as required by 29 CFR 1910.23(c)(1) unless installation or utilization of standard railing is infeasible or creates a greater hazard. Accordingly, the employer must demonstrate that installation or utilization of standard railing is infeasible or creates a greater hazard. If an employer makes such a demonstration, the employer may utilize alternative fall protection in lieu of standard railing when the alternative fall protection is as effective as standard railing.

If alternative fall protection is utilized, the CSHO or consultant shall ensure that each employee has been trained in the proper use of the alternative fall protection system. Failure to provide training shall be cited as a violation of KRS 338.031.

BACKGROUND

29 CFR 1910.23(c)(1) requires standard railing for open sided floors, platforms, and runways four (4) or more feet above adjacent floor or ground level.

In 1978, OSHA issued STD 01-01-00 (old directive number STD 1-1.7) stating:

“ . . . any violation of the requirement for a standard railing or equivalent in 29 CFR 1910.23(c)(1) shall be considered de minimis provided that the use of guard rails are not feasible and that alternate protection is provided.”

The Kentucky Department of Labor did not adopt STD 01-01-00.

On March 20, 1983, the Kentucky Department of Labor issued STANDARDS INTERPRETATION DIRECTIVE NO. 303-23(c)(1)-2. The DIRECTIVE permitted “alternative protection equivalent to standard railing under extenuating circumstances.” The directive stated:

“ . . . situations shall be considered as complying with the intent of the standard wherein the use of guardrails are not feasible and alternative protection is provided.”

In 2006, OSHA issued directive 06-03 (CPL 02). Directive 06-03 (CPL 02) cancels STD 01-01-00 and establishes that OSHA will continue to accept alternative fall protection measures as specified in 29 CFR 1910.28 of the April 10, 1990, Federal Register, Volume 55, Number 69. The 1990 Federal Register proposed to revise the general industry walking and working surfaces and was entitled “*29 CFR 1910, Walking and Working Surfaces and Personal Protective Equipment (Fall Protection Systems); Notices of Proposed Rulemaking.*”

OSHA republished the 1990 proposed rule in the May 2, 2003, Federal Register, Volume 68, Number 85. The May 2, 2003, Federal Register notice reopened the rulemaking record on the 1990 proposed revisions to gather data and information concerning advances in technology and industry practice and updated consensus standards issued since the proposed rule was issued. OSHA also sought public comment on specific issues concerning each proposal.

The *Semiannual Regulatory Agenda* published in the April 24, 2006, Federal Register, Volume 71, Number 78, states:

“In 1990, OSHA proposed a rule (55 FR 13360) addressing slip, trip, and fall hazards and establishing requirements for personal fall protection systems. Since that time, new technologies and procedures have become available to protect employees from these hazards. The Agency has been working to update these rules to reflect current technology. OSHA published a notice to re-open the rulemaking for comment on a number of issues raised in the record for the NPRM. As a result of the comments received on that notice, OSHA has determined that the rule proposed in 1990 is out-of-date and does not reflect current industry practice or technology. The Agency will develop a new proposal, modified to reflect current information, as well as re-assess the impact.”

Section VIII. “Expiration Date.” of directive 06-03 (CPL 02) also confounds the issue. Section VIII states:

“This Notice will expire one year after its issuance. However, the cancellation of STD 01-01-007 is permanent.”

Although the Kentucky Department of Labor did not adopt STD 01-01-00 and is therefore not obligated to adopt directive 06-03 (CPL 02), the Department and the Kentucky Occupational Safety and Health Program reiterate and update the long standing and settled policy regarding alternative fall protection in general industry as stated in the POLICY section of this INSTRUCTION.

ADDITIONAL RESOURCES

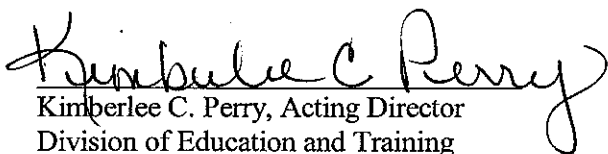
The Kentucky Occupational Safety and Health Program’s Division of Education and Training offers cost free resources and training to employers and employees on acceptable methods of compliance. More information may be found at www.labor.ky.net.

EFFECTIVE DATE


This INSTRUCTION is effective immediately and will remain in effect until cancelled or superseded.



Stephen L. Morrison, Executive Director
Office of Occupational Safety and Health



Kimberlee C. Perry, Acting Director
Division of Education and Training



Steve Sparrow, Director
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