

Chapter 4

Legal Responsibilities and Liabilities of Trainers Under the Mine Safety Act: Overview and Recent Developments

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§ 4.01. Introduction.¹

Training has always been part of a safe and productive mining operation. When Congress enacted the Federal Mine Safety and Health Act of 1977 (“Mine Act”),² it added legal compulsion and regulatory liability avoidance to the pre-existing incentives to properly train miners. Until relatively recently, however, training was a mostly uncontroversial part of a Mine Act compliance program. But several recent developments appear to be changing all that.

An aging work force is creating an increasing demand for new miners at a time when many sectors of the minerals industries are booming—the level of product demand for coal and other minerals is higher now than in recent (and not so recent) memory. As a result, in many sectors of the mining industry there are manpower shortages and a heightened need for the training of new miners. At the same time, whether or not as a result of these trends, MSHA is focusing more critically on training enforcement. With its heightened focus, of course, MSHA is issuing more citations and orders for violations of its training regulations. In addition, the Federal Mine Safety and Health Review Commission (“Review Commission”) has been giving broad deference to MSHA’s interpretations of its onerous and often ambiguous regulations. Given the confluence of these factors, it is becoming ever more vitally important for mine operators to understand what the Mine Act requires of them and the contractors they engage in the way of training,

¹ The authors would like to thank Bridget Littlefield for her assistance with the initial draft of this chapter.

² 30 U.S.C. §§ 801 *et seq.* (2000).

and the serious liability consequences for failure to comply with MSHA's training requirements. Training is not a minor matter or mere technicality; on the contrary, the consequences of not ensuring the proper training are quite serious and can badly disrupt mining operations.

This chapter examines MSHA's training regulations and highlights the most significant liability issues—criminal in addition to civil—that arise under the Mine Act for violations of the training regulations. This chapter also points out some of the pitfalls of a training compliance program that stem from the unfortunate but very real challenge of complying with ambiguous regulations, and identifies one possible line of defense. Finally, this chapter discusses recent case developments and suggests enforcement trends that operators should be familiar with.

§ 4.02. Required Training for Miners.

The Mine Act mandates that safety and health training be provided to both new and experienced miners.³ In turn, MSHA has promulgated regulations requiring the adoption, approval by MSHA, and implementation of training programs to ensure that operators at all mines adequately train their miners to perform their jobs in a safe and healthful manner.⁴ MSHA's regulations apply to all kinds of surface and underground mining and mineral milling operations, including sand, gravel, stone, clay, colloidal phosphate, limestone, and coal mines. The regulations require new miner training, experienced miner training, task training, hazard training, and annual refresher training for all miners. The regulations apply equally to employees of independent contractors.⁵

These training regulations are implemented at a mine through a safety and health training plan which every operator must have approved by MSHA.⁶ Mine operators may conduct their own training programs or they

³ See Mine Act § 115, 30 U.S.C. § 825.

⁴ See 30 C.F.R. pts. 46, 48 (2004).

⁵ See Mine Act § 3(d), 30 U.S.C. § 802(d)(defining “operator” to include “any independent contractor performing services or construction” at any mine subject to the Mine Act); see also 30 C.F.R. pt. 45.

⁶ See 30 C.F.R. §§ 46.3, 48.3.