

REPORT
By the Maine Department of Labor to the Joint Standing Committee on Health and Human Services Regarding the Use of Latex Gloves in Commercial Establishments, Industrial Facilities, and State Agencies
April X, 2004

This report is in response to 2003 Resolves, Chapter 70 (see Appendix A) that required the Department to study the development of protocols regarding the use of latex gloves in commercial establishments, industrial facilities and state agencies.

The problem:

Latex gloves have proved effective in preventing the transmission of many infectious diseases, but exposures to latex may result in allergic reactions. Reports of such reactions have increased in recent years – especially among health care workers. Latex allergy is a reaction to certain proteins in latex rubber. The amount of latex exposure needed to produce sensitization or an allergic reaction is unknown. Increasing the exposure to latex proteins increases the risk of developing allergic symptoms. In sensitized persons, symptoms usually begin within minutes of exposure; but they can occur hours later and can be quite varied. Mild reactions to latex involve skin redness, rash, hives, or itching. More severe reactions may involve respiratory symptoms such as runny nose, sneezing, itchy eyes, scratchy throat, and asthma (difficult breathing, coughing spells, and wheezing). Rarely, shock may occur; however, a life-threatening reaction is seldom the first sign of latex allergy.

While health care workers are at the greatest risk of developing latex allergy because they use latex gloves frequently, workers with less glove use (such as housekeepers, hairdressers, and workers in industries that manufacture latex products) are also at risk. Detecting symptoms early, reducing exposure to latex, and obtaining medical advice are important to prevent long-term health effects. Once a worker becomes allergic to latex, special precautions are needed to prevent exposures. Certain medications may reduce the allergy symptoms; but complete latex avoidance, though quite difficult in some situations, is the most effective approach.

The Current Regulatory Environment:

Currently in the State of Maine there are two agencies with the authority to enforce safety and health regulations in general employment. The United States Department of Labor, Occupational Safety and Health Administration (OSHA) has jurisdiction in the private sector, which would include commercial establishments and industrial facilities. The Maine Department of Labor, Bureau of Labor Standards (BLS) has similar authority over public sector employers, which would include state agencies.

The OSHA protocol that addresses the issue of latex gloves is a part of the Bloodborne Pathogen standard (29 CFR 1910.1030). This standard protects only those who are identified as at-risk for exposure to blood or other infectious materials. The employer makes this identification under the required Bloodborne Pathogen Hazard Determination Policy. The standard states:

The employer shall ensure that appropriate personal protective equipment in the appropriate sizes is readily accessible at the worksite or issued to employees. Hypoallergenic gloves, gloves liners, powderless gloves, or other similar alternatives

shall be readily accessible to those employees who are allergic to the gloves normally provided.

There is a related OSHA regulation in the Hand Protection standard (29 CFR 1910.138). It reads:

Employers shall base the selection of the appropriate hand protection on an evaluation of the performance characteristics of the hand protection relative to the task(s) to be performed, conditions present, duration of use, and the hazards and potential hazards identified.

The state Board of Occupational Safety and Health has adopted the OSHA 1910 standards by reference so both of these regulations apply to public employment in Maine. At present neither OSHA nor BLS have regulations which specifically address the use of latex gloves except where such use is required because of the exposure or possible exposure to blood or other potentially infectious materials.

The National Institute of Occupational Safety and Health (NIOSH), the section of the Centers for Disease Control concerned with workplace safety and health research, has issued an alert regarding the use of latex gloves. This alert has several recommendations including the use of non-latex gloves for activities that are not likely to involve contact with infectious materials and choosing low-protein, powderless latex gloves when latex is chosen for handling infectious materials (see Appendix B). Neither enforcement agency has adopted this as a regulation or rule, but the BLS, with the approval of the Board, is using it as a guideline in its enforcement activities involving the state and other public sector employers. The substance of the NIOSH alert is under consideration by OSHA to become a part of the Hand Protection standard.

Recommendations for Expanding Regulation:

Expanding regulation of the use of latex gloves in the public sector requires no change in the law. The state Board of Occupational Safety and Health has the authority to adopt the NIOSH recommended protocols as rules covering public employment in Maine. However the law is generally read to focus on the federal OSHA standards. Any requirements that go beyond the OSHA regulations need additional justification. A Resolve would provide that justification. We have provided suggested legislation in Appendix C.

Implementing such rules in the private sector is somewhat more complex. The OSHA law preempts state regulation of occupational safety and health except under certain limited conditions. Section 18(a) of the Act is read as preventing any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which a Federal standard has been issued. However, one of the exceptions is any area where OSHA has not promulgated regulations. So, until OSHA adopts such regulations, the state may do so without being concerned with preemption. We have provided suggested legislation in Appendix D.

This proposal assumes that notice is provided to employers and employees through normal departmental channels and enforcement is by response to complaints from affected workers. If the Legislature intends that the Department take a more active role in either of these areas then a fiscal note will be required.

Appendix C.

Resolve, Directing the Board of Occupational Safety and Health to Adopt Rules to Require Protocols Regarding the Use of Latex Gloves in the Public Sector.

Sec. 1. Rules. Resolved: That the Board of Occupational Safety and Health requiring public sector employers to develop protocols regarding the use of latex gloves that will limit the use of such gloves to activities where such use is necessary to prevent infection. The rules must be based on the National Institute of Occupational Safety and Health recommendations in the Alert entitled "Preventing Allergic Reactions to Natural Rubber Latex in the Workplace" (DHHS (NIOSH) Publication No. 97-135 issued June 1997) and must be consistent with the Department of Health and Human Services rules. Health care providers are to be exempt from these rules to the extent that they are covered by rules regarding the use of latex gloves promulgated by the Department of Health and Human Services.

Appendix D.

An Act to Require Protocols Regarding the Use of Latex Gloves in Industrial and Commercial Establishments.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA Chapter 36 is enacted to read:

Chapter 36

Protocols for the Use of Latex Gloves in the Private Sector

§ 3501 Scope

This chapter applies to all employers covered by the federal Occupational Safety and Health Act of 1970. Health care providers are exempt to the extent that they are covered by rules regarding the use of latex gloves promulgated by the Department of Health and Human Services.

§ 3502 Rules Required

The Board of Occupational Safety and Health shall adopt rules requiring private sector employers to develop protocols regarding the use of latex gloves that will limit the use of such gloves to activities where such use is necessary to prevent infection. The rules must be based on the National Institute of Occupational Safety and Health recommendations in the Alert entitled "Preventing Allergic Reactions to Natural Rubber Latex in the Workplace" (DHHS (NIOSH) Publication No. 97-135 issued June 1997) and must be consistent with the Department of Health and Human Services rules.

§ 3503 Notice and Enforcement

The Bureau of Labor Standards shall provide notice to covered employers in a manner consistent with other such rules. The bureau may include a notice of these rules on any required poster that it deems appropriate.

The bureau shall investigate any complaints alleging violations of the rules using the staff and guidelines applicable to other board rules.

The director of the bureau, or any authorized agent of the bureau, may enter any covered workplace when the same is open or in operation, for the purpose of gathering such information as may be necessary to ascertain compliance with the rules. Upon petition of the director, a Superior Court in the county in which any refusal was alleged to have occurred may order appropriate injunctive relief against any person in charge of said workplace who refuses entry to the director or authorized agent of the bureau.

§ 3504 Penalties

Any employer who willfully or repeatedly violates any requirements of this chapter or any standard, rule or order promulgated pursuant to section 3502 may be assessed a civil penalty of not more than \$1,000 for each day during which such violation continues.

Civil penalties owed under this chapter shall be paid to the director for deposit with the Treasurer of State, and may be recovered in a civil action in the name of the State brought in the Superior Court of the county where the violation is alleged to have occurred or where the employer has its principal office. Interest shall accrue on such penalties at the rate of 1 1/2% per month except that the interest shall be suspended during the pendency of an appeal.

§ 3505 Coordination with Federal Standards

In order to reduce any burden on interstate commerce and to facilitate compliance, it is the intent of the legislature that there be no duplication of enforcement. If federal OSHA adopts and enforces standards regarding the use of latex gloves, the rules promulgated under this chapter must be enforced only to the extent that they provide additional protection to workers.

§ 3506 Discrimination

No person shall discharge or in any manner discriminate against an employee because that person has filed any complaint concerning alleged violations of this chapter or has testified or is about to testify in any proceeding relating the same or because of the exercise by the employee on behalf of the employee or others of any right granted by this chapter.

Any employee who believes that they have been discharged or otherwise discriminated against by any person in violation of this section may, within 30 days after the alleged violation occurs, file a complaint with the director, alleging discrimination. Upon receipt of the complaint, the director shall conduct an investigation as deemed appropriate. If upon investigation the director determines that the provisions of this chapter have been violated, the director shall bring an action in the Superior Court in the county in which the alleged violation occurred. In any action, the Superior Court shall have jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief, including rehiring or reinstatement of the employee to the employee's former position with back pay.

Appendix A.

RESOLVES
First Regular Session of the 121st

CHAPTER 70
S.P. 262 - L.D. 767

Resolve, Directing the Department of Human Services To Enact Rules To Reduce the Health Risks Associated with Latex Gloves

Sec. 1. Rules. Resolved: That the Department of Human Services, Bureau of Health shall adopt rules requiring the development of protocols regarding the use of latex gloves in the following environments: hospitals, offices of health care providers, health facilities, nursing facilities and home health agencies. The rules must direct persons responsible for the applicable entities to develop protocols after considering the health and safety of employees and the general public and the particular environment to which the protocols will apply. By January 30, 2004 the Bureau of Health shall report back to the Joint Standing Committee on Health and Human Services regarding the rules, the development of protocols, the anticipated impact of the protocols and whether legislation is required to further address allergies to latex gloves. Rules adopted pursuant to this resolve are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A; and be it further

Sec. 2. Report. Resolved: That the Department of Labor shall study the development of protocols regarding the use of latex gloves in commercial establishments, industrial facilities and state agencies and shall report to the Joint Standing Committee on Health and Human Services by January 15, 2004 with recommendations for legislation; and be it further

Sec. 3. Appropriations and allocations. Resolved: That the following appropriations and allocations are made.

HUMAN SERVICES, DEPARTMENT OF
Bureau of Health

Initiative: Appropriates funds for one 1/2-time Public Health Nurse II position and associated administrative costs to develop and administer rules for the development of protocols for the use of latex gloves.

General Fund	2003-04	2004-05
Positions - Legislative Count	(0.500)	(0.500)
Personal Services	\$19,718	\$23,661
All Other	28,700	14,800
General Fund Total	\$48,418	\$38,461

Effective September 13, 2003, unless otherwise indicated.

Appendix B.

Excerpt from the NIOSH Alert: Preventing Allergic Reactions to Natural Rubber Latex in the Workplace

DHHS (NIOSH) Publication No. 97-135 June 1997

RECOMMENDATIONS

The following recommendations for preventing latex allergy in the workplace are based on current knowledge and a common-sense approach to minimizing latex-related health problems. Evolving manufacturing technology and improvements in measurement methods may lead to changes in these recommendations in the future. For now, adoption of the recommendations wherever feasible will contribute to the reduction of exposure and risk for the development of latex allergy.

Employers

Latex allergy can be prevented only if employers adopt policies to protect workers from undue latex exposures. NIOSH recommends that employers take the following steps to protect workers from latex exposure and allergy in the workplace:

1. Provide workers with nonlatex gloves to use when there is little potential for contact with infectious materials (for example, in the food service industry).
2. Appropriate barrier protection is necessary when handling infectious materials [CDC 1987]. If latex gloves are chosen, provide reduced protein, powder-free gloves to protect workers from infectious materials.

The goal of this recommendation is to reduce exposure to allergy-causing proteins (antigens). Until well accepted standardized tests are available, total protein serves as a useful indicator of the exposure of concern.

3. Ensure that workers use good housekeeping practices to remove latex-containing dust from the workplace:
 - Identify areas contaminated with latex dust for frequent cleaning (upholstery, carpets, ventilation ducts, and plenums).
 - Make sure that workers change ventilation filters and vacuum bags frequently in latex-contaminated areas.
4. Provide workers with education programs and training materials about latex allergy.
5. Periodically screen high-risk workers for latex allergy symptoms. Detecting symptoms early and removing symptomatic workers from latex exposure are essential for preventing long-term health effects.
6. Evaluate current prevention strategies whenever a worker is diagnosed with latex allergy.

Workers

Workers should take the following steps to protect themselves from latex exposure and allergy in the workplace:

1. Use nonlatex gloves for activities that are not likely to involve contact with infectious materials (food preparation, routine housekeeping, maintenance, etc.).
2. Appropriate barrier protection is necessary when handling infectious materials [CDC 1987]. If you choose latex gloves, use powder-free gloves with reduced protein content:
 - Such gloves reduce exposures to latex protein and thus reduce the risk of latex allergy (though symptoms may still occur in some workers).
 - So-called hypoallergenic latex gloves do not reduce the risk of latex allergy. However, they may reduce reactions to chemical additives in the latex (allergic contact dermatitis).
3. Use appropriate work practices to reduce the chance of reactions to latex:
 - When wearing latex gloves, do not use oil-based hand creams or lotions (which can cause glove deterioration) unless they have been shown to reduce latex-related problems and maintain glove barrier protection.
 - After removing latex gloves, wash hands with a mild soap and dry thoroughly.
 - Use good housekeeping practices to remove latex-containing dust from the workplace:
 - Frequently clean areas contaminated with latex dust (upholstery, carpets, ventilation ducts, and plenums).
 - Frequently change ventilation filters and vacuum bags used in latex-contaminated areas.
4. Take advantage of all latex allergy education and training provided by your employer:
 - Become familiar with procedures for preventing latex allergy.
 - Learn to recognize the symptoms of latex allergy: skin rashes; hives; flushing; itching; nasal, eye, or sinus symptoms; asthma; and shock.
5. If you develop symptoms of latex allergy, avoid direct contact with latex gloves and other latex-containing products until you can see a physician experienced in treating latex allergy.
6. If you have latex allergy, consult your physician regarding the following precautions:
 - Avoid contact with latex gloves and other latex-containing products.
 - Avoid areas where you might inhale the powder from latex gloves worn by other workers.
 - Tell your employer and your health care providers (physicians, nurses, dentists, etc.) that you have latex allergy.

- Wear a medical alert bracelet.

7. Carefully follow your physician's instructions for dealing with allergic reactions to latex.