Legal Implications of Bedbug Eradication

Efforts at Nonprofits

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I. Overview

Bedbug infestations are an increasingly common problem in residences, businesses, and in nonprofit facilities. Bedbugs, which were previously controlled to the point of near eradication, have made a resurgence based on increased pesticide tolerances, the ban of some of the most effective (and most dangerous) pesticides, and increases in human travel and mobility. In the nonprofit arena, shelters and other facilities that care for transient populations are at the greatest risk of infestation.

Infestations can be hard to manage in scenarios where employee and client exposures to the pesticides and treatments necessary to eliminate bedbugs must be balanced with the need to take affirmative steps to eliminate the infestation. Striking such a balance is often very difficult. While federal and state authorities do not aggressively restrict the use of pesticides in the workplace, certain mitigating steps and workarounds are strongly recommended in order to preserve employee goodwill and to deter unwarranted litigation.

This memorandum first briefly discusses what bedbugs are and the legal considerations related to eliminating bedbugs in the workplace. The memorandum then offers practical suggestions for employee communications and workplace practice controls.

II. What are Bedbugs?

Bedbugs are small insects that feed on the blood of mammals and birds. Adult bedbugs have flat oval bodies that are rusty red in color. While bedbugs are visible with the naked eye, they often remain very well hidden and typically only emerge to feed at night. Bedbugs can live anywhere within a building but commonly live in or near the bed and can be found in bedding, mattresses, furniture (such as the headboards and nightstands), or even molding or peeling wallpaper.

In non-residential scenarios, such as workplaces, bedbugs are not as easily traced or restricted to sleeping quarters. In an office building, bedbugs will travel greater distances to feed. Further, bedbugs can acclimate to feed during the daytime, thereby placing dayshift workers at risk of getting bitten.

Bedbug bites are usually painless, although such bites often result in large, itchy welts on the skin. Critically, state and local health organizations do not consider bedbug bites to be dangerous. They are not known to spread disease but can cause allergic reactions in sensitive populations.

The presence of bedbugs does not mean that a facility or its inhabitants are unclean. Bedbugs are an equal opportunity pest. They have been found in both five-star hotels and homeless shelters. Bedbugs’ ubiquity can be attributed to transient populations and the inherent difficulties in exterminating them. They are small, easily hidden, largely nocturnal, and can survive for months without feeding.
III. **Legal Considerations for Bedbug Control and Extermination**

There are a wide range of technologies and techniques aimed at controlling and eradicating bedbugs. All treatments require aggressive and invasive cleaning of the premises and laundering of all linens. In some cases, people choose to dispose of all potentially impacted bedding and furniture. Most nonprofits, however, do not have such a luxury.

In addition to cleaning and remediation, bedbug control also typically involves treatments designed to kill any remaining bedbugs and their eggs. These treatments often involve the application of pesticides, although there are some “green” technologies that can be applied, such as freezing, steaming, or the use of “green chemicals”. Generally speaking, however, traditional pesticide applications remain the most cost-effective means of exterminating bedbugs. Further, because the use of steam or freezing systems do not typically involve the use of hazardous chemicals, the occupational health implications of such treatments need not be discussed here.

The Occupational Safety and Health Act (“OSH Act”) and U.S. Occupational Health and Safety Administration (“OSHA”) rules promulgated thereunder contain the various workplace regulatory requirements that might apply here. Basically, regulations pursuant to the OSH Act require: (1) that employers maintain a workplace that is free from recognized hazards and (2) that employers communicate with their employees about the hazards in the workplace.

OSHA regulations do not regulate pesticides or their application. Instead, they set permissible exposure limits (“PELs”), short-term exposure limits (“STELs”), and action levels (“ALs”) for various chemicals. When a chemical is present in the workplace above an AL, certain requirements may be triggered (employee exposure monitoring, housekeeping, use of personal protective equipment (“PPE”), etc.). When exposures to a listed substance exceed a PEL, STEL, or AL, a combination of engineering and work practice controls are typically mandated to reduce exposures to below the PEL, STEL, or AL.

Pesticides and their application are regulated by the U.S. Environmental Protection Agency (“EPA”) and typically by Departments of Environmental Protection or Health Departments on a State level. These agencies place rigid controls on pesticide use and applicator qualifications and licensing. Indeed, it is critical that nonprofits hire only licensed pesticide applicators. Doing so not only helps ensure that the pesticides are applied in the safest and most

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1. Steam treatments emit only water vapor and freezing treatments typically only emit carbon dioxide and water vapor.


3. Connecticut, New Jersey, and New York have state analogs to OSHA and the OSH Act. However, in these three states, both apply solely to state and local employees. See www.osha.gov/dcsp/osp/faq.html#oshaprogram.
effective matter, it also shifts liability under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) to the certified pesticide applicator.4

The licensed pesticide applicator will ensure that pesticides are applied in such a manner that no chemical constituents of such pesticides exceed, or, realistically, even approach, applicable OSHA limits. Practically speaking, it is extremely unlikely that any constituent of a bedbug pesticide application could exceed an applicable limit. First, bedbug pesticides are among the least toxic of all pesticides because, by necessity, they are applied in living areas and, often, directly to bedding. Further, ALs and PELs are calculated as a time weighted average exposure throughout an entire workday. While there may be a brief initial AL or PEL exceedance at the time of application and in the direct area of the application, it would be very unlikely that such levels would be sustained hours after application. Additionally, the licensed pesticide applicator will likely instruct that treated areas be avoided for a period of time following initial application.

For those chemicals for which OSHA has not set a PEL, STEL, or AL, OSHA still applies the OSH Act General Duty Clause. The General Duty Clause requires that employers provide “employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”5 Here again, based on typical bedbug pesticide applications and OSHA’s own calculation of risk, it is highly unlikely that OSHA would ever determine that a well-managed and licensed pesticide applicator’s application of pesticides created a “hazard” under the General Duty Clause.

Thus, when a chemical has established AL, PEL, and STEL, and none of those levels will be exceeded, or when a chemical has no AL, PEL, and STEL, nonprofit facilities need not require or provide PPE to employees or communicate hazards to their employees. These requirements are only triggered by hazard determinations. However, as explained below, dialogue with employees over the chemicals used, even when not legally required, may have substantial employee relations benefits.

If an employee complains about the application of pesticides in the workplace, the employer must take such complaints seriously and should not retaliate against an employee raising such complaints.6

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4 When engaging a pesticide applicator, you should request proof of licensing and retain a copy for your records and, potentially, to aid in employee communications.


IV. **Best Practices**

When pesticides are applied in the workplace, some employees may become concerned about the potential impact on their health. Other employees may have different or enhanced sensitivities to pesticides and may experience dermal or respiratory discomfort. However, similar symptoms may also be related to exposures to bedbugs and their wastes. With any pesticide application that potentially involves employee exposure, there are some best practices which can be utilized that, while not legally required, can be very effective in alleviating employee concerns, cutting down on grievances and complaints, and reducing the potential for employee litigation.

a. **Communication** – Nonprofits at risk for bedbugs should advise their employees about the risks of bedbugs and how to detect the telltale signs of the presence of bedbugs. Nonprofits can advise employees about steps to take to avoid transporting bedbugs to or from employees’ home.

Nonprofits working with transient residential clients should consider asking clients about their exposure to bedbugs, work with their clients to inspect clients’ belongings (including luggage) for bedbugs upon arrival at residential shelters, ensure that appropriate cleaning techniques (*e.g.*, laundering linen at an appropriately hot temperature) are being used, and inspect residential rooms periodically for bedbug infestations.

Nonprofits should take steps to keep their employees informed of the absolute necessity of the pesticide applications. Bedbugs are among the most difficult types of pests to irradiate. Bedbugs in the workplace create a risk that such bugs can be carried home in clothing, handbags, or backpacks. Everyone should be made to understand that they are all beneficiaries of the organization’s efforts to eliminate the bedbug problem. Employers can help amplify these points by downloading information from their state health organization that describes the invasiveness and resilience of bedbugs.7

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7 Some sources of information include:

1. U.S. Environmental Protection Agency (“EPA”):

While it is likely easy to convince employees that bedbugs in the workplace need to be controlled, it is likely more difficult to get all employees to buy into a pesticide control program. Nonetheless, where the employer exceeds the regulatory requirements with respect to communication and work practice controls, it should let its employees know such.

In particular, it is important to inform employees that the nonprofit engaged a licensed pesticide controller to combat the bedbug problem. This is consistent with recommendations and guidelines provided by the New Jersey Department of Health and Senior Services (“NJDHSS”) and the New Jersey Department of Environmental Protection (“NJDEP”). It is also consistent with the practices of numerous similarly situated entities, such as shelters and hotels.

3. Centers for Disease Control and Prevention (“CDC”):

4. Connecticut Department of Public Health:

5. New Jersey Department of Health and Senior Services (“NJDHSS”):

6. New York City Department of Health and Mental Hygiene:
Employees should be made aware that all pesticide applications complied with federal and state laws and regulations for pesticide use and workplace safety. In fact, the licensed pesticide applicator can often explain how chemicals were specifically selected to minimize human impact and exposure. OSHA, which sets occupational exposure limits for chemicals, likely does not recognize any risks associated with the bedbug-control chemicals at the levels applied.\(^8\) Organizations should make available to employees all material data safety sheets ("MSDSs") and labels for the pesticides that are used in the shelter. Organizations should also consider making such information known to new or prospective employees.

In sum, organizations should communicate the critical nature of their bedbug issues and state that, in controlling such problem, (1) it is working to protect its employees and clients, and (2) it has complied with the law, followed all state guidelines, and exceeded its legal requirements through its communication efforts and work practice controls.

b. Work Practice Controls – Organizations should closely follow all safety instructions provided by its licensed pesticide applicator. Additionally, when feasible, organizations should minimize exposure to the most highly impacted employees by scheduling applications when such employees are off duty. Facilities should try to allow off-site work, work reassignment, and different intra-office arrangements to minimize employee exposure. Consistent with the licensed pesticide applicator’s recommendations, facilities may consider increasing ventilation, such as using windows when seasonable. Further, while not required by federal or state law, organizations may consider making low-cost facemasks or respirators available to employees following applications.

V. Conclusion

When pesticides must be applied in the workplace, organizations are best protected by engaging a licensed pesticide applicator to irradiate the infestation. State and federal OSH exposure and action limits are unlikely to be triggered by a licensed pesticide application when all the applicator’s safety instructions are heeded. While not necessarily required by the OSHA Act or state equivalents, increasing employee communication and notification efforts is beneficial for employee relations and morale. Additionally, wherever possible work practice controls and occupational work-arounds can make employees more comfortable with the necessary applications.

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\(^8\) While a pesticide application is highly unlikely to exceed a PEL, STEL, or AL for a specific chemical, it is important that the organization confirm this fact with the licensed pesticide applicator.
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