If There’s Mold in Your Workplace Making You Ill, Who Can You Call? Shockingly, Not OSHA!

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As both a human resources professional and a licensed attorney with more than 15 years of professional experience, I thought there was no workplace scenario that I could not manage. Furthermore, I believed I knew which resources to access or employment laws to leverage to protect myself. However, when I started a new job in 2012, I began to experience fatigue, weakness, headaches, skin rashes, and chronic sinus congestion. It took me several months to realize the connection between my workplace and my worsening symptoms, despite the fact that I visited many physicians, including several general practitioners and specialists. After recognizing the correlation between my symptoms, which would abate when I was away from work, and recur upon return to the workplace, I reported the issue to my employer. I learned that other employees were experiencing similar symptoms, albeit less severe than mine. Despite being made aware of these problems, management performed perfunctory testing but refused to fully acknowledge and/or address the air quality issues. Consequently, I filed two complaints with the Occupational Safety & Health Administration (OSHA).

The complaints included the results of air testing that showed the presence of mold spores (despite the fact that air purifiers were in operation when the samples were collected), information about my symptoms, and the names and symptoms of several other employees. Concurrently, I learned that another employee had previously filed a similar complaint with OSHA. I was understandably disappointed when the OSHA Duty Officer said the agency could not investigate the matter. His verbatim statement was, “We don’t have any OSHA standards regarding mold and based on the information provided, the mold was comparable to outside readings so
there is not really an issue that we can go forward with.” I was floored. I just couldn’t believe that the government agency charged with assuring safe and healthy working conditions refused to provide any assistance or conduct an investigation after receiving multiple complaints. I was also surprised that the principal reason that OSHA could not assist me was because there are “no federal standards or recommendations, (e.g., OSHA, NIOSH, EPA) for airborne concentrations of mold or mold spores!” This information was shocking because not only are the health-related dangers of mold fairly common knowledge, the Centers for Disease Control and Prevention (CDC), the Institute of Medicine (IOM), and the World Health Organization (WHO) acknowledge that mold exposure can produce serious reactions among some workers in occupational settings.

With no assistance from OSHA and no actions by my employer to address the air quality issues, my symptoms continued to worsen. I grew increasingly concerned about my health. After six months of repeatedly voicing my concerns to my employer to no avail, I resigned. Although the most severe reactions ended after my departure, it is nearly two years later, and I am still managing signs and symptoms indicative of “mold illness,” a subcategory of biotoxin illness known as Chronic Inflammatory Response Syndrome (CIRS). The clinical definition of CIRS is:

An acute and chronic, systemic inflammatory response syndrome acquired following exposure to the interior environment of a water-damaged building with resident toxigenic organisms, including, but not limited to fungi, bacteria, actinomycetes and mycobacteria as well as inflammmagens such as endotoxins, beta glucans, hemolysins, proteinases, mannans and possibly spirocyclic drimanes; as well as volatile organic compounds.3

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Despite the evidentiary basis for mold published in 2010 and the evidence regarding the recognition and treatment of biotoxin illnesses since 1997, mold illness is often unrecognized or misdiagnosed because many physicians are not familiar with it and the symptoms are often mistaken for allergies. Mold illness is not simply an allergy. “It is an inflammation within the body which is caused by an immune system that has gone haywire.” CIRS is often “caused by exposure to the interior environment of Water Damaged Buildings (WDB).” The prevalence of CIRS is increasing and environmental health experts are seeing increasing number of patients with symptoms directly related to mold exposure. Despite acknowledgement of the health dangers of mold exposure, no leading health organization has developed standards or even recommendations for acceptable airborne concentrations of mold or mold spores. And while OSHA’s own Safety and Health Information Bulletin entitled, A Brief Guide to Mold in the Workplace, states “concern about indoor exposure to mold has increased along with public awareness that exposure to mold can cause a variety of health effects and symptoms, including allergic reactions,”, the same bulletin includes this disclaimer:

This Safety and Health Information Bulletin is not a standard or regulation, and it creates no new legal obligations. The Bulletin is advisory in nature, informational in content, and is intended to assist employers in providing a safe and healthful workplace. Pursuant to the Occupational Safety and Health Act, employers must comply with hazard-specific safety and health standards and regulations promulgated

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by OSHA or by a state with an OSHA-approved state plan. In addition, pursuant to Section 5(a)(1), the General Duty Clause of the Act, employers must provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. In other words, although OSHA acknowledges that mold can be a health hazard, there are no standards, thus, employers are under no legal or regulatory obligation to provide employees with a workplace free from mold, even if the mold is making employees sick! As a result, OSHA has no obligation to investigate instances of possible mold contamination, even when multiple individuals complain of symptoms consistent with mold illness or CIRS.

The myriad of health policy and legal issues raised by mold contamination in the workplace are too numerous to discuss in this article (e.g., potential Americans with Disabilities Act violations, potential medical malpractice and workers compensation/personal injury claims, etc.). But fundamentally, OSHA’s policies and procedures regarding this issue are unacceptable because they directly compromise the health of employees, a situation in direct conflict with the agency’s mission.

I recommend the following solutions. First, OSHA should either develop standards and regulations for airborne concentrations of mold or mold spores and address this issue in the same manner it addresses other safety and health hazards in the workplace. Alternatively, even without formal standards, the agency should investigate situations in which multiple complaints are filed against a single facility within a designated period of time. Second, if OSHA refuses to accept the responsibility of assisting employees with mold contaminated workplaces, the agency should, at least, refer employee complainants to the CDC’s less well-known Health Hazard Evaluation Program offered by the National Institute for Occupational Safety and Health (NIOSH). NIOSH can provide assistance and information and may visit the

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workplace to assess exposure and employee health.\textsuperscript{13} Based on their findings, the agency can also recommend ways to reduce hazards and prevent work-related illnesses, and the evaluation is done at no cost to the employers, employees, or employee representatives.\textsuperscript{14}

In conclusion, no American employee should be compelled to leave their job to protect their health when a government agency already exists to address such issues. The Occupational Safety & Health Administration (OSHA) should review and revise its current policies and procedures regarding mold in the workplace.

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\textsuperscript{13} \textit{Id.}
\textsuperscript{14} \textit{Id.}