

# ENVIRONMENTAL HAZARDS AND TOXIC MATERIALS

**Important Note:** The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. This information was updated in April 2010.

## 1. Question: What rights do prisoners have?

Exposing prisoners to dangerous conditions or toxic substances may violate the Eighth Amendment of the Constitution, which prohibits cruel and unusual punishment. U.S. Const. amend. VIII. Prison officials violate the Eighth Amendment if, with deliberate indifference, they expose a prisoner to a condition that poses an unreasonable risk of serious harm to the prisoner's present or future health or safety. *See Helling v. McKinney*, 509 U.S. 25, 35 (1993). Deliberate indifference is more difficult to prove than negligence or carelessness. Some prison conditions may establish an Eighth Amendment violation collectively, even if each condition would not do so individually, provided that all of the conditions have a "mutually enforcing effect that produces the deprivation of a single, identifiable human need," such as food or warmth. *Wilson v. Seiter*, 501 U.S. 294, 304 (1991)

## 2. Question: What types of conditions have courts found to violate the Eighth Amendment?

**Defective plumbing.** *See Jackson v. Duckworth*, 955 F.2d 21, 22 (7th Cir. 1992); *McCord v. Maggio*, 927 F.2d 844, 847 (5th Cir. 1991); *Williams v. Griffin*, 952 F.2d 820, 825 (4th Cir. 1991).

**Denial of adequate toilet facilities.** *See Gates v. Cook*, 376 F.3d 323, 340-41 (5th Cir. 2004); *Johnson v. Lewis*, 217 F.3d 726, 732 (9th Cir. 2000); *Mitchell v. Newryder*, 245 F. Supp. 2d 200 (D. Me. 2003). *But see Knop v. Johnson*, 977 F.2d 996, 1013 (6th Cir. 1992) (required use of nonflushable toilets on occasion did not violate the Eighth Amendment).

**Deprivation of appropriate bedding.** *See Townsend v. Fuchs*, 522 F.3d 765, 773-74 (7th Cir. 2008) (moldy and wet mattress).

**Deprivation of basic sanitation.** *See Gillis v. Litscher*, 468 F.3d 488, 493 (7th Cir. 2006) (a lack of sanitation can violate a prisoner's Eighth Amendment rights); *Gates v. Cook*, 376 F.3d 323, 337-38 (5th Cir. 2004) (filthy cell conditions); *McBride v. Deer*, 240 F.3d 1287, 1292 (10th Cir. 2001); *Johnson v. Lewis*, 217 F.3d 726, 732 (9th Cir. 2000) (inmates were not allowed to clean themselves after being denied access to toilets and soiling themselves); *Harper v. Showers*, 174 F.3d 716, 717, 720 (5th Cir. 1999); *Palmer v. Johnson*, 193 F.3d 346, 352 (5th Cir. 1999); *Bradley v. Puckett*, 157 F.3d 1022, 1025 (5th Cir. 1998); *Myers v. Hundley*, 101 F.3d 542, 544 (8th Cir. 1996) (long-term, repeated deprivation of adequate hygiene supplies violates inmates' Eighth Amendment rights); *Williams v. Adams*, 935 F.2d 960, 961 (8th Cir. 1991) (denial of personal hygiene items and clean clothes); *Howard v. Adkison*, 887 F.2d 134, 137 (8th Cir. 1989) (two-year confinement to a cell covered in filth and human waste and denial of access to cleaning supplies or laundry service); *Johnson v. Pelker*, 891 F.2d 136, 139 (7th Cir. 1989) (lack of running water, feces on the wall and ignored requests for cleaning supplies). *But see Lunsford v. Bennett*, 17 F.3d 1574, 1580 (7th Cir. 1994) (24-hour delay in providing requested hygiene supplies was not an Eighth Amendment violation); *Harris v. Fleming*, 839 F.2d 1232, 1235-36 (7th Cir. 1988) (denial of toilet paper for five days and soap, toothbrush, and toothpaste for ten days was not an Eighth Amendment violation).

**Excessive cold.** *See Gillis v. Litscher*, 468 F.3d 488, 493 (7th Cir. 2006) (lack of heat or clothing can violate a prisoner's Eighth Amendment rights); *Gaston v. Coughlin*, 249 F.3d 156, 164-65 (2d Cir. 2001); *Palmer v. Johnson*, 193 F.3d 346, 352-53 (5th Cir. 1999); *Dixon v. Godinez*, 114 F.3d 640, 642

(7th Cir. 1997); *Del Raine v. Williford*, 32 F.3d 1024, 1035 (7th Cir. 1994) (frostbite, hypothermia, or similar injury from cold is not an absolute requisite for an Eighth Amendment violation – allegation of a cell temperature not much higher than the outdoor temperature, which was 40 or 50 degrees below zero with wind-chill, was sufficient); *Foulds v. Corley*, 833 F.2d 52, 54 (5th Cir. 1987); *Lewis v. Lane*, 816 F.2d 1165, 1171 (7th Cir. 1987) (inadequate heating in prison may constitute an Eighth Amendment violation). *But see Strickler v. Waters*, 989 F.2d 1375, 1382 (4th Cir. 1993) (no Eighth Amendment violation where inmates received blankets whenever the jail became uncomfortably cold).

**Excessive heat.** *See Gates v. Cook*, 376 F.3d 323, 339-40 (5th Cir. 2004); *Johnson v. Lewis*, 217 F.3d 726, 732 (9th Cir. 2000) (inmates held out-of-doors for four days without protection sufficient to ward off heat-related illness); *Reece v. Gragg*, 650 F. Supp. 1297, 1304 (D. Kan. 1986); *Rhem v. Malcolm*, 371 F. Supp. 594, 627 (S.D.N.Y. 1974). *But see Chandler v. Crosby*, 379 F.3d 1278, 1297-98 (11th Cir. 2004) (cell temperatures that occasionally approached 100 degrees did not violate the Eighth Amendment); *Strickler v. Waters*, 989 F.2d 1375, 1382 (4th Cir. 1993) (no Eighth Amendment violation where the jail was equipped with fans).

**Excessive noise.** *See Keenan v. Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996). *But see Givens v. Jones*, 900 F.2d 1229, 1234 (8th Cir. 1990) (no Eighth Amendment violation where prisoner suffered migraine headaches from noise during a three-week housing unit renovation).

**Exposure to asbestos.** *See Smith v. United States*, 561 F.3d 1090, 1105 (10th Cir. 2009) (prison employees knew asbestos was in the closet where an inmate worked); *Wallis v. Baldwin*, 70 F.3d 1074, 1077 (9th Cir. 1995) (inmate was forced to tear off loose pipe covering and insulation with insufficient protection from asbestos exposure); *Powell v. Lennon*, 914 F.2d 1459, 1463 (11th Cir. 1990) (inmate was forced to remain in a dormitory filled with friable asbestos). *But see McNeil v. Lane*, 16 F.3d 123, 125 (7th Cir. 1994) (exposure to “moderate levels of asbestos” did not violate the Eighth Amendment).

**Exposure to electric shock.** *See Ambrose v. Young*, 474 F.3d 1070, 1076 (8th Cir. 2007) (prisoner was electrocuted by dangling power line).

**Exposure to human waste.** *See Gates v. Cook*, 376 F.3d 323, 340-41 (5th Cir. 2004) (“ping-pong” toilets occurring when the feces of one inmate bubbled up in a neighboring cell, exacerbated by overflowing toilets); *DeSpain v. Uphoff*, 264 F.3d 965, 977 (10th Cir. 2001) (exposure to flooding and human waste); *Williams v. Adams*, 935 F.2d 960, 962 (8th Cir. 1991) (toilet continually ran over and leaked onto the floor, which stayed filthy). *But see Knop v. Johnson*, 977 F.2d 996, 1013 (6th Cir. 1992) (occasional use of non-flushable toilets did not violate the Eighth Amendment even though inmates were forced to use portable urinals to throw urine and feces into the courtyard).

**Exposure to insects, rodents, and other vermin.** *See Gates v. Cook*, 376 F.3d 323, 340 (5th Cir. 2004) (mosquito infestation); *Gaston v. Coughlin*, 249 F.3d 156, 166 (2d Cir. 2001); *Jackson v. Duckworth*, 955 F.2d 21, 22 (7th Cir. 1992); *Williams v. Griffin*, 952 F.2d 820, 825 (4th Cir. 1991); *Foulds v. Corley*, 833 F.2d 52, 54 (5th Cir. 1987).

**Exposure to second-hand tobacco smoke.** *See Helling v. McKinney*, 509 U.S. 25, 35 (1993) (prisoner’s cellmate smoked 5 packs of cigarettes per day); *Powers v. Snyder*, 484 F.3d 929, 933 (7th Cir. 2007) (prisoner was denied a smoke-free cell); *Lehn v. Holmes*, 364 F.3d 862, 872 (7th Cir. 2004) (non-smoking prisoners were housed with smokers); *Atkinson v. Taylor*, 316 F.3d 257, 268-69 (3d Cir. 2003) (inmate was housed for over seven months with “constant” smokers and suffered from numerous medical symptoms as a result); *Davis v. New York*, 316 F.3d 93, 100-01 (2d Cir. 2002); *Reilly v. Grayson*, 310 F.3d 519, 521 (6th Cir. 2002). *But see Powers v. Snyder*, 484 F.3d 929, 932 (7th Cir. 2007) (a prison

is not required to provide a completely smoke-free environment, except in the case of prisoners who have asthma or other serious respiratory conditions that even a low level of smoke would aggravate; normal prisoners must prove they are exposed to unreasonably high levels of smoke to show an Eighth Amendment violation); *Caldwell v. Quinlan*, 729 F. Supp. 4, 6 (D.D.C. 1990) (no Eighth Amendment violation where smoke occasionally drifted over to a prisoner's cell from designated smoking areas), *aff'd*, 923 F.2d 200 (D.C. Cir. 1990).

**Exposure to the extreme behavior of severely mentally ill prisoners.** See *Gates v. Cook*, 376 F.3d 323, 343 (5th Cir. 2004) (exposure to the constant screaming and feces-smearing of mentally ill prisoners).

**Inadequate food or unsanitary food service.** See *Phelps v. Kanoplas*, 308 F.3d 180, 186 (2d Cir. 2002); *Johnson v. Lewis*, 217 F.3d 726, 732 (9th Cir. 2000); *Jackson v. Arizona*, 885 F.2d 639, 641 (9th Cir. 1989); *Ramos v. Lamm*, 639 F.2d 559, 570-71 (10th Cir. 1980); *Wilson v. VanNatta*, 291 F. Supp. 2d 811, 817 (N.D. Ind. 2003); *Drake v. Velasco*, 207 F. Supp. 2d 809, 812 (N.D. Ill. 2002).

**Inadequate lighting or constant lighting.** See *Gates v. Cook*, 376 F.3d 323, 341-42 (5th Cir. 2004) (inadequate lighting); *Keenan v. Hall*, 83 F.3d 1083, 1090-91 (9th Cir. 1996) (constant illumination).

**Inadequate ventilation.** See *Board v. Farnham*, 394 F.3d 469, 485-86 (7th Cir. 2005); *Keenan v. Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996); *Ramos v. Lamm*, 639 F.2d 559, 569-70 (10th Cir. 1980).

**Lack of drinkable water.** See *Hearns v. Terhune*, 413 F.3d 1036, 1042-43 (9th Cir. 2005) (lack of cold water where yard temperatures reached 100 degrees); *Johnson v. Lewis*, 217 F.3d 726, 732 (9th Cir. 2000); *Jackson v. Duckworth*, 955 F.2d 21, 22 (7th Cir. 1992); *Jackson v. Arizona*, 885 F.2d 639, 641 (9th Cir. 1989) (polluted drinking water).

**Lack of fire safety.** See *Hadix v. Johnson*, 367 F.3d 513, 525 (6th Cir. 2004); *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985) (prisoners need not wait until actual casualties occur to obtain relief from an unreasonable threat of injury or death by fire); *Gates v. Collier*, 501 F.2d 1291, 1300, 1305 (5th Cir. 1974). *But see Coniglio v. Thomas*, 657 F. Supp. 409, 414 (S.D.N.Y. 1987) (the Eighth Amendment does not require sprinkler systems where there are limited amounts of flammable materials and insufficient heat to trigger fires unless intentionally contrived).

**Risk of injury or death in the event of an earthquake.** See *Jones v. City and County of San Francisco*, 976 F. Supp. 896, 909-10 (N.D. Cal. 1997).

**Sleep deprivation.** See *Gates v. Cook*, 376 F.3d 323, 340 (5th Cir. 2004); *Harper v. Showers*, 174 F.3d 716, 720 (5th Cir. 1999).

**Sleeping on the floor.** See *Thomas v. Baca*, 514 F. Supp. 2d 1201, 1219 (C.D. Cal. 2007) (inmates forced to sleep on floor due to insufficiency of bunks). *But see Summers v. Sheahan*, 883 F. Supp. 1163, 1170-71 (N.D. Ill. 1995) (sleeping on cold floors for two months was merely a "temporary inconvenience," not rising to an Eighth Amendment violation).

**Toxic or noxious fumes.** See *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1054-55 (8th Cir. 1989) (pesticides sprayed into housing units); *Cody v. Hillard*, 599 F. Supp. 1025, 1032 (D.S.D. 1984) (inadequate ventilation of toxic fumes in inmate workplaces), *aff'd in part and rev'd in part on other grounds*, 830 F.2d 912 (8th Cir. 1987) (en banc). *But see Givens v. Jones*, 900 F.2d 1229, 1234 (8th Cir. 1990) (no Eighth Amendment violation where a prisoner suffered migraine headaches from fumes during a three-week housing unit renovation).

**Miscellaneous unhealthy or dangerous conditions.** See *Brown v. Missouri Dep't of Corr.*, 353 F.3d 1038, 1040 (8th Cir. 2004) (transport officers refused to fasten a prisoner's seat belt); *Hall v. Bennett*, 379 F.3d 462, 465 (7th Cir. 2004) (unsafe conditions for prisoner performing electrical work); *Gill v. Mooney*, 824 F.2d 192, 195 (2d Cir. 1987) (inmate was required to work on an unsafe ladder); *Kirby v. Blackledge*, 530 F.2d 583, 587 (4th Cir. 1976) (prisoner was housed in a "Chinese cell" with no bedding, light, or toilet facilities, save a hole in the floor).

**3. Question:** What types of conditions do not violate the Eighth Amendment?

Some courts have suggested that dangerous conditions do not violate the Constitution if workers in the surrounding community labor under the same conditions. See *Jackson v. Cain*, 864 F.2d 1235, 1245 (5th Cir. 1989). For example, a prisoner's allegation that he was forced to work in heavy corn dust without a mask, causing nosebleeds, hair loss, and facial sores, did not constitute an Eighth Amendment violation because "there was no showing that the practice differed from that of the surrounding agricultural community or violated a clearly established law." *Id.* Similarly, exposure to a pesticide did not violate the Eighth Amendment when the exposure merely violated a non-mandatory regulation and was not shown to be any different from practices in the surrounding agricultural community. *Sampson v. King*, 693 F.2d 566, 569 (5th Cir. 1982).

**4. Question:** Are prisons required to comply with civilian environmental regulations?

The Constitution does not require prisons to comply with all civilian environmental regulations. See *French v. Owens*, 777 F.2d 1250, 1257 (7th Cir. 1985) (finding that a prison does not need to comply with federal Occupational Safety and Health Administrations – OSHA, or state regulations). However, civilian environmental regulations may be enforced by various government agencies, and a prisoner may argue that these regulations provide evidence of contemporary standards of decency.

If you have a case involving dangerous conditions or toxic substances, it may be helpful to complain to state or local health departments, OSHA, or other relevant agencies. State or local regulations may be enforceable in state courts.

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