



OSHA ALERTS

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Enforcement, Standard-Setting are OSHA Priorities

President Obama signed March 11, 2009 a \$410 billion omnibus spending bill that provides more than \$513 million for the Occupational Safety and Health Administration. OSHA will see a \$27 million increase over fiscal year 2008 spending levels under the bill. According to an explanatory note, the \$27 million increase for OSHA funding should be used “to begin rebuilding OSHA’s enforcement capacity and to increase the pace of standard setting.” To that end, the bill directs OSHA to set aside \$1 million for “recordkeeping enforcement initiative on injury and illness reporting, addressing the apparent lack of completeness of the OSHA Log of Work-Related Injuries and Illnesses.” Another \$250,000 is set aside for the National Institute for Occupational Safety and Health to pursue follow-up studies on underreporting of worker injury data, particularly among the self-employed.

Just last week, Labor Secretary Hilda Solis said that the top priorities of her department are hiring investigators and enforcing regulations on worker safety and fair pay. Solis said the focus on OSHA enforcement is especially important now due to the fact that federal recovery funding is launching construction projects that will need oversight to protect workers. At a hearing on green jobs at the Senate Health, Education, Labor and Pensions Committee, Ms. Solis stated “We’ve seen large numbers of fatalities, injuries – that could be prevented – particularly in the construction industry. ... My priority right now is that we have seen where there is a great deal of concern of lack of enforcement over the last few years at work sites – at worker safety...”

In addition to the funding provided under the omnibus bill, the Department of Labor received \$6.5 million for state and federal OSHA enforcement from the American Recovery and Reinvestment Act. The department intends to add another 100 investigators to ensure that contractors on stimulus projects are in compliance with all safety rules and regulations.

What does this mean for our clients? Employers should review their existing safety programs and ensure that they are up to date with current regulations and that they have good recordkeeping practices. It is important to update your safety program in advance of any OSHA inspection. Employers should also make sure that they have filed the requisite OSHA 300 logs with OSHA. Please contact our office if you need assistance updating your safety program, implementing a safety program, or providing safety training to your supervisors and employees.

OSHA Notifies 14,000 Workplaces with High Injury and Illness Rates

OSHA sent letters to approximately 14,000 employers across the country to alert them that their injury and illness rates are considerably higher than the national average. In the letter,

OSHA Administrator Edwin Foulke, Jr. explained that the notification was a proactive step to encourage employers to take action now to reduce these rates and improve the safety and health conditions in their workplaces. “Our goal is to make [such employers] aware of their high injury and illness rates and to get them to focus on eliminating hazards in their workplace,” Foulke said.

OSHA identified businesses with the nation’s highest rates of workplace injuries and illnesses through employer-reported data from a 2008 survey of 80,000 worksites. Workplaces receiving notifications had 5.4 or more injuries resulting in days away from work, restricted work activity, or job transfer (DART) for every 100 full-time employees, which was more than two (2) times the national average.

Employers receiving the letters were also provided copies of their injury and illness data, along with a list of industry-specific most frequently cited OSHA standards.

It is important to note that an employer’s injury and illness rate is one of the key factors that lands a company on OSHA’s radar screen, which would ultimately increase the chance of an inspection or audit by OSHA. Therefore, if your company received such a letter, it is important for you to look at ways to improve your company’s safety program and reduce the overall injuries and illnesses experienced by your employees.

Increased Penalties for Personal Protective Equipment Violations

Employers may now be cited on a “per instance” basis if they fail to provide personal protective equipment (PPE) or training as required to each employee covered under a workplace safety or health standard. On January 12, 2009, OSHA published a final rule that significantly increases the monetary penalties for certain PPE and hazards training violations. The final rule, titled “Clarification of Employers’ Duty to Provide Personal Protective Equipment and Train Each Employee,” provides a simple “clarification”: Each violation of the PPE or training requirement results in a per-employee penalty.

In the past, an employer’s failure to provide required PPE or training to a large team of employees was frequently treated by OSHA as a single violation. For example, if the penalty for failing to provide certain PPE was \$1,000, the employer would have been assessed a \$1,000 penalty, even if it failed to provide 200 employees with the required PPE. Now the final rule amends the OSHA regulations to clarify that a grouping of violations is no longer allowed, meaning that the foregoing employer may be assessed penalties totaling \$200,000.

The final rule did not add new compliance obligations. However, it is a good time to review your compliance with OSHA’s rules on PPE and hazardous materials training to ensure that you are complying with the applicable standards and in turn avoid the exponentially increased fines and penalties.