

OSHA—Critical Updates for 2023 & 2024

Labor & Employment Law Update

By Matthew Horn on September 14, 2023

OSHA has been particularly busy and aggressive lately, making good on Biden Administration promises and talking points—hiring more inspectors, appointing new administrators, conducting more inspections, aggressively issuing citations, adopting and expanding emphasis programs, reviving old rules, and expanding existing rules. Below is a summary of those recent actions:

Department of Labor Resurrects Rule Requiring Yearly Reporting of OSHA 300s and 301s for Larger Employers

Resurrecting a rule that it attempted—but failed—to implement years ago, the Department has announced that it will require certain employers in high-hazard industries to electronically submit additional injury and illness information beyond their 300As. The rule applies to establishments with 100 or more employees in certain high-hazard industries including construction, manufacturing, agriculture, transportation, warehousing, and utilities. The rule requires employers to annually submit information and data from their 300 Logs and 301 Reports in addition to the Form 300A.

In its press release, OSHA stated that it will publish “some” of the data collected on its website. This information will be available to employers, employees, potential employees, employee representatives, current and potential customers, researchers, and the general public. OSHA claims that providing public access to this data will ultimately reduce occupational injuries and illnesses. The rule will take effect on January 1, 2024—unless the Department again fails to build-out the appropriate software in time.

Department of Labor Broadens Definition of Third-Party Representatives at OSHA Inspections

The Department has proposed a new rule expanding the definition of “employee representatives” authorized to participate in OSHA inspections. The proposed rule clarifies that employees have the right to authorize not only fellow employees, but also non-employee third parties, to act as their representatives during OSHA inspections. It also clarifies that the non-employee third-party representatives are not limited to those outlined in the existing regulation, such as industrial hygienists or safety engineers. Under the proposed rule, the representative could be anyone the OSHA compliance officer deems to have

“skills, knowledge, or experience that may help inform the inspection.” This means that union representatives maybe allowed to accompany OSHA compliance officers during inspections at non-union facilities, ultimately allowing OSHA and unions to gain more power, influence, and access to the workplace.

Department of Labor Announces Enforcement Guidance to “Target Employers Who Put Profit Over Safety”

The Department announced new enforcement guidance gives OSHA Regional Administrators and Office Directors broad authority to cite certain violations as “instance by instance citations” for certain conditions. These conditions include lockout/tagout, machine guarding, permit-required confined space, respiratory protection, falls, trenching and for cases with other-than-serious violations specific to recordkeeping. Additionally, OSHA reminded its Regional Administrators and Area Directors of their authority to not group violations, and instead cite them separately, including each instance of a violation. The goal of this new guidance—legal or not—is to put additional monetary pressure on companies who have been cited before to force them into compliance going forward.

Department of Labor Announces New Emphasis Program re. Warehouses & Distribution Centers

OSHA launched a three-year emphasis program focusing on workplace hazards in warehouses, processing facilities, distribution centers, and high-risk retail establishments. The program focuses on hazards related to: 1) powered industrial trucks; 2) material handling and storage; 3) walking and working surfaces; 4) means of egress and fire protection; 5) heat; and 6) ergonomics. OSHA will conduct comprehensive safety inspections of establishments in these industries, with establishments being chosen for inspection from two lists: 1) those with industry codes covered under this emphasis program; and 2) large retail establishments with warehousing and distribution centers with the highest rates of injuries and illnesses.

Julie Su Nominated to Run the Department of Labor

President Biden announced Julie Su as his nominee to the head of the Department some months ago. As the former head of CalOSHA and the deputy secretary for the Department for the last two years, she built a reputation for championing union interests and adopting burdensome, unworkable regulations—especially those relating to COVID. Her pending confirmation to oversee the Department—which has stalled and is not likely to ever actually happen—has not stopped her from taking the reigns at the Department and aggressively furthering the Biden Administration’s agenda, including expanding union interests and adopting burdensome, unworkable regulations. In fact, many of the activities underlying the updates above have been adopted during Su’s time leading the Department.

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