

August 3, 2010

OSHA is “Back in the Enforcement Business.” Are You Prepared?

As Secretary of Labor Hilda Solis informed a convention of safety engineers last year, “Make no mistake about it: The Department of Labor is back in the enforcement business.” In 2010, current OSHA enforcement statistics confirm this promise and reveal unprecedented levels of enforcement. According to OSHA Deputy Assistant Administrator Richard Fairfax, roughly halfway through OSHA’s 2010 fiscal year it has achieved the following:

- OSHA has performed 21,522 inspections, putting it on pace to best the 39,004 inspections conducted in the 2009 fiscal year.
- OSHA is also ahead in total violations cited, with 52,350, putting the agency on pace to exceed 100,000 by the end of the fiscal year. The previous record was 87,663 set in 2009.
- So far in 2010, 82 percent of the violations cited were serious, willful, or repeat, which also is the highest rate for those types of violations in agency history.

While enforcement activity is at an all-time high, the agency is also paving the way to bolster its capabilities through new proposed regulations. (See the Haynes and Boone May 10, 2010 [Client Alert](#).) This active regulatory agenda would seemingly suggest that OSHA has lost confidence that Congress will pass the pending Protecting America’s Workers Act to overhaul the OSHA Act. This is not the case. Rather, significant revisions to the OSHA Act are part of a larger, new bill gaining momentum in the House of Representatives to revamp the Federal Mine Safety and Health Act of 1977 following the April 2010 mine explosion in West Virginia.

We have prepared an overview of provisions under the Miner Safety and Health Act of 2010 pending in the House, which would amend the OSHA Act. [This document](#) contains: (a) an introduction to the current status of the legislation with a summary of the key proposed changes to the OSHA Act; (b) a listing of the current sections of the OSHA Act with the ones affected by the proposed Miner Safety and Health Act highlighted on the list; and (c) the actual text of the current OSHA Act with mark ups to the text reflecting the changes the Miner Safety and Health Act would make to the current OSHA Act.

Additionally, OSHA recently (i) announced its new standard on cranes and derricks in construction, and (ii) sent a rule on recording musculoskeletal disorders (MSD) in OSHA 300 logs to the Office of Management and Budget (OMB).

Regarding the crane and derrick rule, on July 28, 2010, OSHA published the text of the new rule and announced that it will be included in the Federal Register on August 9, 2010. The rule will become effective 90 days later or on November 6, 2010. A copy of the regulatory text is available [here](#). Significant requirements in the new rule include: an inspection of tower crane parts before assembly; use of synthetic slings in accordance with the manufacturer’s instructions during assembly/disassembly work; assessment of ground conditions; qualification or certification of crane operators; and procedures for working in the vicinity of power lines. The final rule requires operators of most types of cranes to be qualified or certified under one of the options set forth in 29 CFR § 1926.1427. Employers have up to four years to ensure that their operators are qualified or certified, unless they are operating in a state or city that has operator requirements that satisfy the OSHA standard. An employer must pay for the cost of the training required for operator certification.

Concerning the recording of MSDs in the OSHA 300 log, the agency has finalized the rule and sent it to OMB on July 14, 2010. OSHA has announced that it expects the OMB review to be complete and the final rule published in the Federal Register in August 2010. Under the rule, a new column for recording a MSD case will be added to the 300 log and employers must follow the existing recordkeeping criteria for determining if a MSD case is recordable.

If you have any questions, please feel free to contact the following attorney:

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