

## OSHA Quarterly Newsletter, February 2016

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February 2, 2016 Matthew Deffebach

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PRACTICES OSHA, Labor and Employment

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### **OSHA's 2015 Top 10 Most Cited Workplace Safety Violations Released**

OSHA has released its top ten most cited violations of 2015. The similarities between this year's list and prior lists are striking, indicating a consistent focus on certain violations. Other than a single position change between Lockout/Tagout and Powered Industrial Trucks, the list is exactly the same as in 2014. Employers should take extra precaution to ensure compliance with these issues.

[Read more.](#)

### **OSHA Assesses \$332,000 in Sanctions and Compels Rehire in Wrongful Termination Action**

In a sweeping condemnation of workplace retaliation, OSHA ordered a transportation company to pay \$154,749 in back wages, \$177,720 in punitive damages and attorney's fees, and the reinstatement of a terminated employee.

[Read more.](#)

### **New Enforcement Weighting System to Allow Inspections Focused on Most Hazardous Workplace Issues**

Concurrent with the beginning of OSHA's 2016 fiscal year on October 1, 2015, OSHA has implemented a new Enforcement Weighting System that is designed to incentivize impactful inspections that require more time and resources. Among the more heavily weighted inspections are cases with fines in excess of \$100,000 and process safety management, ergonomic hazards, heat hazards, and workplace violence hazard inspections.

[Read more.](#)

### **New Silica Exposure Standard One Step Closer to Finalization**

On December 21, 2015, the Labor Department sent a draft of OSHA's final rule on occupational exposure to crystalline silica to the Office of Management and Budget's Office of Information and Regulatory Affairs. OIRA has the authority to review regulations and has 90 days to conduct its review, with the opportunity for a 30-day extension. The sending of the rule to OIRA signals that the rule could be finalized in the next 90 to 120 days.

[Read more.](#)

### **Enterprise-Wide Abatement Relief Upheld by Administrative Law Judge**

In a recent case, *Central Transport, LLC*, (OSHRC Nos. 14-1452, 14-1612, and 14-1934, Dec. 7, 2015), Administrative Law Judge Carol A. Baumerich allowed OSHA to argue for enterprise-wide relief, essentially giving OSHA a "one and done" approach to enforcing safety regulations. Enterprise-wide relief allows OSHA to allege in litigation that violations should be abated at all facilities nation-wide even if an inspector only encountered an infraction at the facility being

inspected.

[Read more.](#)

## 11th Circuit Distinguishes *ComTran* Decision Regarding Supervisor Misconduct and Employer Knowledge

You may recall the 11th Circuit's 2013 pro-employer ruling *ComTran Grp. v. U.S. DOL*, 722 F.3d 1304 (11th Cir. 2013), finding that supervisor misconduct cannot be used to establish the element of employer knowledge. Although a manager's conduct is generally imputed to the employer, *ComTran* put the burden on the Secretary of Labor to show employer knowledge of the violative condition, either constructive or actual, aside from the supervisor's misconduct.

[Read more.](#)

## Possible Prison Time for Workplace Safety Violations

The recent Memorandum of Understanding between the U.S. Department of Justice and Department of Labor reinvigorated the Worker Endangerment Initiative by "redoubling" the agencies' cooperative "efforts to hold accountable those who unlawfully jeopardize workers' health and safety," Deputy Attorney General Sally Quillian Yates announced on December 17, 2015.

[Read more.](#)

## In Other News

Employers should also be aware of this other recent development:

- OSHA has announced that it is beginning a new regulatory project to "revoke a small number of obsolete" permissible exposure limits ("**PELs**") listed in its regulations.<sup>[1]</sup> OSHA did not mention which PELs it intends to revoke, but the agency believes the outdated PELs impart a "false level sense of security to workers and employers who mistakenly believe that the PEL represents the level at which there are no adverse health effects." Once it revokes the obsolete PELs, OSHA intends to use other tools to protect the safety and health of workers, including citations under the General Duty clause. OSHA has scheduled a Request for Information for July 2016.

[1] Revocation of Obsolete Permissible Exposure Limits (PELs), Request for Information, RIN 1218-AD01, available [here](#).

If you have any questions, please visit the Haynes Boone [Occupational Safety and Health Act \(OSHA\) and Workplace Disasters page](#) of our website or contact one of the lawyers listed in this newsletter.