

OSHA Quarterly Newsletter, May 2016

May 6, 2016 Matthew Deffebach

PRACTICES OSHA, Labor and Employment

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[Highlights from the 2016 Midwinter Meeting of the American Bar Association OSHA Committee](#)

Matthew Deffebach and Punam Kaji attended this year's American Bar Association OSHA Committee Midwinter Meeting in Santa Barbara, California. One of the highlights included comments from Dr. David Michaels, Assistant Secretary of Labor for OSHA, who discussed some of the following issues:

- OSHA's focus will be on doing things "more and differently." Rigorous enforcement and compliance assistance will continue, but new programs will be introduced.
- More focus on ergonomics and Musculoskeletal Disorders with more and clearer standards for employers to follow. For example, there will be a poultry focus in the "Chicken Belt," which includes parts of Dallas.

[Read more.](#)

[Silica Final Rule Announced; Will Take Effect on June 23, 2016 with Staggered Compliance Dates Thereafter](#)

On March 24, 2016, OSHA announced its final rule covering protections for workers exposed to respirable silica dust. The final rule will:

- Reduce the permissible exposure limit for crystalline silica to 50 micrograms per cubic meter of air, averaged over an eight-hour shift.
- Require employers to use engineering controls (such as water or ventilation) and work practices to limit worker exposure; provide respiratory protection when controls are not able to limit exposures to the permissible level; limit access to high exposure areas; train workers; and provide medical exams to highly exposed workers.

[Read more.](#)

[Fifth Circuit Rules that Global Hazard Assessments Without Confirmation of Similarity for Each Location Are Not Permissible](#)

We previously reported on a divided Review Commission decision (Wal-Mart Distribution Center #6016) where the majority, in our opinion, failed to account for the reality of how sophisticated retailers conduct PPE assessments. As we noted, the case was being appealed to the Fifth Circuit

Court of Appeals. Unfortunately, the Fifth Circuit adopted the Review Commission's faulty reasoning.

[Read more.](#)

[OSHRC Rules in Favor of Employer in Supervisor Misconduct Case](#)

Employers may breathe a little easier following a recent decision regarding supervisor-based vicarious liability. In *Secretary of Labor v. S.J. Louis Construction of Texas*, the Occupational Safety and Health Review Commission's ruling potentially narrowed the scope of the constructive knowledge requirement in supervisor misconduct cases.

[Read more.](#)

[OSHA Issues Revised Whistleblower Investigations Manual](#)

On January 28, 2016, OSHA released an updated Whistleblower Investigations Manual, which updated the April 21, 2015 manual. The Manual outlines the procedures and other information related to handling whistleblower complaints under the many statutes delegated to OSHA.

[Read more.](#)

[Seventh Circuit Holds that General Safety Rules Alone are Not Enough for a Good Faith Defense to a Willful Classification](#)

In *Stark Excavating, Inc. v. Perez*, the Seventh Circuit Court of Appeals shed some light on the applicability of the good faith defense to a willful classification and the type of evidence upon which employers must rely in order to prevail on the defense.

[Read more.](#)

[The Department of Labor Files Suit against Lear Corp. for Retaliation and Names Individual Managers](#)

Over the past several months, our OSHA Newsletters have covered a number of [retaliation/whistleblower claims](#) resulting in severe damages and penalties for the employer. A case of particular interest was *Perez v. Lear Corp.*, where a federal court granted a restraining order requested by the Department of Labor [preventing the employer from committing any retaliatory acts](#) before the OSHA investigation had been completed.

[Read more.](#)

[New Guidance for OSHA Hazardous Communication Standard](#)

OSHA has issued guidance related to the new Hazard Communication Standard. On June 1, 2016, all employers are mandated to update their hazard communication programs and train their workforces as necessary on the updated system per the last implementation deadline of the new

standard.

[Read more.](#)

[List of Small Businesses Exempt from Inspection Updated](#)

OSHA has updated its list of employers who are exempt from programmed safety inspections. Effective January 29, 2016, if an employer has 10 or fewer employees and is represented on the updated list, OSHA will not make a programmed safety inspection. Inspections can still be prompted by injuries, complaints and deaths.

[Read more.](#)

In Other News

Employers should also be aware of this other recent development:

- OSHA reports that during its first full year of the new Severe Injury Reporting Program, employers reported 10,388 severe injuries, including 7,636 hospitalizations and 2,644 amputations. 62 percent of reported injuries resulted in a Rapid Response Investigation ("RRI"), including 69 percent of hospitalization reports. The RRI allows employers to analyze the incident to identify the causes, presents to OSHA its findings and proposed abatements, and confer with OSHA regarding implementation of those abatements. 38 percent of reported injuries, and 58 percent of reported amputations, resulted in a worksite inspection. According to OSHA, the majority of first year reports were filed by large employers. OSHA warns that in the second year of the requirement, it will be more likely to cite employers for non-reporting violations, which carry a penalty of \$7,000 or \$70,000 for a willful failure to report. (These amounts will increase when the recently approved higher penalties go into effect.)

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.