

OSHA Quarterly Newsletter, June 2018

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PRACTICES OSHA, Labor and Employment

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No Time Limit on Look Back Period for Repeat Citations

In *Triumph Constr. Corp. v. Sec’y of Labor*, the Second Circuit Court of Appeals upheld a look back period for a repeat violation beyond the Commission’s “general” policy of three years to determine a repeat violation.

In *Triumph*, an employee was injured in a cave-in at an excavation site. On February 13, 2015, Triumph was cited for violation of an OSHA excavation standard. The citation was classified as a repeat violation based on two previous citations, one in 2009 and another in 2011, issued for violation of the same standard. Triumph challenged the repeat classification of the citation on the basis that the Commission improperly looked beyond the three-year look back period allowed under its policy.

[Read more](#)

DOL Corrects Implementation of “Improve Tracking of Workplace Injuries and Illnesses” Regulation

In May 2016, OSHA published its final rule requiring employers with more than 250 employees and employers with 20-249 employees in industries that historically have high rates of occupational injuries and illnesses to electronically submit the OSHA 300A Log. In a correction to its initial implementation of the rule, OSHA has determined that the regulation requires all effected employers to submit injury and illness data even if the employer is covered by a state plan that has not completed adoption of a state rule. There will not be a retroactive requirement for employers in covered state plans that have not adopted a state rule to submit data for 2016.

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OSHA to Begin Enforcement of Respirable Crystalline Silica Standards for General and Maritime Industries

In March 2016, OSHA published the updated respirable crystalline silica rule for all industries. On June 23, 2018, OSHA will begin enforcement of most of the provisions of the standard for general industry and maritime businesses, including a new eight-hour time-weighted average (TWA) permissible exposure limit (PEL) of 50 µg/m³, an action level (AL) of 25 µg/m³, and associated ancillary requirements.

[Read more](#)

Safe Practices for Robotics in the Workplace

Use of industrial robots to perform repetitive activities such as material handling, assembly, loading and unloading product is common in many workplaces today. While robots promote efficiency, they may create new hazards in the workplace that require attention from employers. An appropriate

robotic safety system is essential to protect employees who program, operate, maintain and repair robots, and others who could be exposed to hazards associated with a robot's operation.

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Update on Cal/OSHA's Workplace Violence Prevention Standards

You will recall from our last newsletter that the California Division of Occupational Safety and Health (Cal/OSHA) is in the process of drafting rules for workplace violence prevention that would apply to all California employers with the exception of certain healthcare providers and certain law enforcement agencies.

The workplace violence prevention rules are currently in the pre-rulemaking stage, with Cal/OSHA having held two advisory meetings in January of 2017 and 2018. The minutes and public comments from the January 2018 meeting will likely be posted in the next month. Cal/OSHA staff anticipates another advisory meeting in the coming fall or winter, where employers will have the opportunity to weigh in on the proposed regulation. After the next advisory meeting, Cal/OSHA staff expects the regulation to enter the formal rule-making stage. Implementation of the regulation is expected approximately one year later.

[Read more](#)

In Other News

Cal/OSHA Aims to Ensure Electronic Submission of Injury and Illness Records

This past February, Assembly Member Thurmond introduced Assembly Bill 2334, addressing employer electronic reporting requirements for occupational injuries and illness.

AB 2334 was originally intended to create a California-specific injury and illness database, requiring employers to submit their electronic forms to the California Division of Occupational Safety and Health. The Bill however was significantly amended last month, resulting in a more deferential approach to the federal regulations.

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Fifth Circuit to Hear Oral Arguments in Hensel Phelps Case in August 2018

In June 2017, the Occupational Safety and Health Review Commission (the "Commission") applied Fifth Circuit precedent and determined that employer Hensel Phelps could not be liable for a violation of the Occupation Safety and Health Act (the "Act") based solely upon a subcontractor's employees' exposure to the condition, and vacated a citation issued by OSHA.

The case arose from a complaint relating to an unprotected excavation at a construction site. Hensel Phelps was the general contractor on the site, but the employees at issue were employed by a secondary subcontractor, CVI Development, LLC (CVI). Following a complaint, an OSHA compliance officer conducted an inspection that uncovered the CVI employees were working next to an excavated, vertical, wet soil wall that was not properly sloped or otherwise protected from cave-in hazards, in full view of Hensel Phelps' management.

[Read more](#)

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.