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Violating California's Occupational Safety and Health Act May Lead to Civil Penalties

On February 8, 2018, the California Supreme Court unanimously ruled that local prosecutors could pursue civil penalties against employers for violating workplace safety standards under California's unfair competition law and fair advertising law, despite the employer's federal preemption challenges. Solus Indus. Innovations, LLC, 228 Cal. Rptr. 3d 406 (2018). In its civil lawsuit, the Orange County District Attorney's Office, claimed that (1) the employer's failure to comply with workplace safety standards represented an unlawful, unfair, and fraudulent business practice; and (2) the employer's representations concerning its commitment to workplace safety and its compliance with all applicable workplace safety standards were false and misleading in violation of California's fair advertising law. While the federal Occupational Safety and Health Act of 1970 does not allow for civil penalties against employers, California employers will now be faced with the prospect of both civil and administrative penalties for workplace safety and health violations.
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Limitation on a PPE Not Recognized Where Manufacturer's SOP Did Not Contain the Limitation

Sec'y of Labor v. Midwest Steel, Inc., is a recent reminder that employers should be aware of and stay current with the safety features in Personal Protective Equipment (PPE) that are known in the industry. OSHRC No. 15-1471, 2017 WL 7370045 (Sept. 13, 2017). There, the Commission vacated a citation for alleged violation of the General Duty Clause following a fatal accident, because based on the information existing at the time of the accident, neither the industry nor the Respondent recognized the alleged hazardous condition.
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OSHA's Updated General Industry Walking-Working Surfaces and Fall Protection Standards to Become Effective in 2018

On January 17, 2017, the final rule to update the General Industry Walking-Working Surfaces and Fall Protection Standards became effective. According to OSHA, the updated rules provide greater flexibility in choosing a fall protection system. The final rule applies to all walking-working surfaces, including floors, stairs, platforms, rope descent systems, ladders, ramps, scaffolds, elevated walkways and fall protection systems in all general industry workplaces. The standard has a rolling-effective date for employers to comply with provisions related to ladder safety systems and personal fall arrest systems on fixed ladders. (§1910.28(b)(9). The final rule prohibits the use of cages and wells because there is wide recognition that they do not prevent workers from falling from fixed ladders, nor do they prevent injury if a fall occurs.
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California Division of Occupational Safety and Health Crafts Workplace Violence Rules

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The California Division of Occupational Safety and Health (Cal/OSHA) held two advisory meetings in January to solicit input and comments on its proposed draft rules for workplace violence prevention that would apply to nearly all California employers. Passage of these standards would make California the first state to issue workplace violence rules, which would surpass federal protections.
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Cal/OSHA Prepares Drafts of Heat Illness Prevention in Indoor Places of Employment Regulation

In October 2016, Governor Brown signed and approved California Senate Bill 1167, which went into effect on January 1, 2017. That Bill added California Labor Code section 6720 to state, "By January 1, 2019, the division shall propose to the standards board for the board's review and adoption, a standard that minimizes heat-related illness and injury among workers working in indoor places of employment. The standard shall be based on environmental temperatures, work activity levels, and other factors."
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OSHA's Interim Guidance on Citing Employers that Failed to Electronically Submit Injury and Illness Records

According to a rule that became effective on January 1, 2017, OSHA requires certain employers to electronically submit injury and illness records directly to OSHA over the next several years. The information required to be electronically submitted includes that on OSHA Form 300 Log of Work-Related Injuries and Illnesses and OSHA Form 300A Summary of Work-Related Injuries and Illnesses. *See* 29 C.F.R. § 1904.41(a)(1)-(2).
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California Employers May Benefit From Confirming That Their First-Aid Kits Comply with CAL/OSHA Standard

California Division of Occupational Safety and Health (Cal/OSHA) has recently increased enforcement of violations of a General Industry Safety Order requiring that employers' first-aid materials be approved by a consulting physician.
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Respirable Crystalline Silica: OSHA Updates General Industry and Maritime Standard

In an effort to better protect workers, OSHA issued an updated respirable crystalline silica standard for general industry and maritime, which became effective on June 23, 2016. This is the first update to the Standard since its adoption in 1971. The updated general industry standard requires employers to limit worker exposure to respirable crystalline silica and implement other safety measures to protect employees from silicosis, lung cancer, and other respiratory diseases.
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If you have any questions, please visit the Haynes Boone Occupational Safety and Health Act (OSHA) and Workplace Disasters page of our website.

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