

OSHA Quarterly Newsletter, November 2017

November 20, 2017 Matthew Deffebach

PRACTICES Labor and Employment, OSHA

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OSHA "Injury Tracking Website" Presents Issues as Employer Deadline for Compliance Looms

On August 1, 2017, the U.S. Occupational Safety and Health Administration ("OSHA") launched the "Injury Tracking Application" for Electronic Submission of Injury and Illness Records to OSHA in an effort to comply with its electronic record-keeping rule. OSHA's website offers three options for data submission: (1) users will be able to manually enter data into a web form; (2) users will be able to upload a CSV file to process single or multiple establishments at the same time; and (3) users of automated recordkeeping systems will have the ability to transmit data electronically via an API (application programming interface).

[Read more.](#)

Hensel Phelps Decision Vacates Willful Citation Because Exposed Workers Were Not General Contractor's Employees

In *Secretary of Labor v. Hensel Phelps Construction Co.*, Docket No. 15-1638 (June 1, 2017), the Occupational Safety and Health Review Commission (the "Commission") held that due to longstanding Fifth Circuit precedent, OSHA could not hold Hensel Phelps liable for a safety violation based solely upon a subcontractor's employees' exposure.

[Read more.](#)

Silica: Rule Enforced for Construction but 30-Day "Good Faith" Grace Period; Oral Arguments Heard on Challenge

OSHA began enforcing the Respirable Crystalline Silica construction standard, 29 CFR § 1926, on September 23, 2017. Shortly before the enforcement date, Thomas Galassi, Acting Deputy Assistant Secretary of Labor for Occupational Safety and Health, issued a memo announcing, "[d]uring the first 30 days of enforcement, OSHA will carefully evaluate good faith efforts taken by employers in their attempts to meet the new construction silica standard." During this time, OSHA will set out to assist employers with complying with the new standard per the memo. Galassi cautions, however, that if an employer is "not making any efforts to comply, [that employer] may also be considered for citation."

[Read more.](#)

James Sullivan Confirmed and Sworn in to Last Seat on Occupational Safety and Health Review Commission

Management-side labor and employment attorney James Sullivan was sworn in as an OSHRC Commissioner on August 28, 2017 after his Senate confirmation. Immediately prior to being appointed by President Donald Trump, Sullivan was a shareholder with Cozen O'Connor. Sullivan's practice focused on labor and employment law and workplace safety and health matters. Sullivan's

term expires in April 2021.

[Read more.](#)

In Other News

Fall Protection Again Tops OSHA's Top 10 Cited Safety Violations: OSHA recently revealed its list of the top 10 most commonly cited OSHA work safety standards for Fiscal Year 2017. For the sixth consecutive year, Fall Protection – General Requirements was the most frequently cited workplace safety violation. This year's list remains relatively unchanged from previous years, with the exception of Fall Protection – Training Requirements citations, a new addition to the list. Employers and employees should remain vigilant in these areas. The full top 10 list of frequently cited violations is below:

1. Fall Protection – General Requirements (29 CFR 1926.501; 6,072 violations)
2. Hazard Communication (29 CFR 1910.1200; 4,176 violations)
3. Scaffolding (29 CFR 1926.451; 3,288 violations)
4. Respiratory Protection (29 CFR 1910.134; 3,097 violations)
5. Lockout/Tagout (29 CFR 1910.147; 2,877 violations)
6. Ladders (29 CFR 1926.1053; 2,241 violations)
7. Powered Industrial Trucks (29 CFR 1910.178; 2,162 violations)
8. Machine Guarding (29 CFR 1910.212; 1,933 violations)
9. Fall Protection – Training Requirements (29 CFR 1926.503; 1,523 violations)
10. Electrical – Wiring Methods (29 CFR 1910.305; 1,405 violations)

Trump Administration Nominates Scott A. Mugno to Head OSHA: The White House recently announced the nomination of Scott A. Mugno to serve as Assistant Secretary of Labor for OSHA. Mugno most recently served as the Vice President for Safety, Sustainability and Vehicle Maintenance at FedEx Ground and previously served as the Managing Director for FedEx Corporate Safety, Health and Fire Protection. In his roles at FedEx, Mugno's responsibilities included developing, promoting, and facilitating the safety and health program and culture. Prior to FedEx, Mugno was a regulatory attorney both in-house and at law firms. He also served in the Army JAG corps. If confirmed, Mugno will join an administration focused on deregulation and that seeks to cut OSHA's enforcement budget. It remains to be seen how Mugno will steer the agency and if he will focus as heavily on enforcement as the previous administration.

If you have any questions, please visit the Haynes Boone [Occupational Safety and Health Act \(OSHA\) and Workplace Disasters](#) page of our website.