OSHA Quarterly Newsletter, October 2019

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Things are Getting "Serious" for California Employers

At the end of August 2019, California Governor Gavin Newsom signed two bills, effective January 1, 2020, that revise California Division of Occupational Safety and Health's (Cal/OSHA) reporting requirements for serious incidents and, in turn, change the method by which employers must report such incidents. Assembly Bill 1805 amends the definition of "serious injury or illness" and "serious exposure" under California Labor Code Section 6302 for reporting a serious occupational injury and illness to Cal/OSHA.
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Where Auer we after Kisor v. Wilkie?

On June 26, 2019, the Supreme Court issued its decision in Kisor v. Wilkie, holding that courts should continue deferring to an administrative agency's reasonable interpretation of its own ambiguous regulations, but only if certain conditions are met. While not an employment-related case, the decision in Kisor has the potential to impact employers and compliance with rules and regulations issued by OSHA.
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Ninth Circuit Breathes Life into OSHA's Respiratory Protection Standard

On September 11, 2019, the Ninth Circuit issued its opinion in Seward Ship's Drydock, Inc., holding that §1910.134(d)(1)(iii) of the OSHA Respiratory Protection Standard requires employers to evaluate what, if any, respiratory hazards exist in a workplace where there is a potential for overexposure to employees.
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OSHA Submits RFI for Revisions to Silica Standard for Construction

In the August 15, 2019, Federal Register, OSHA released a Request for Information (RFI), seeking information which could assist OSHA in possibly revising its standards for respirable crystalline silica exposure. OSHA is interested in gathering information on the effectiveness of engineering and work practice controls not currently included for the tasks and equipment listed in Table I in its construction industry standard.
Read more.

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OSHA Issues Final Rule for New Respirator Fit Testing Protocols

A final rule, that became effective on September 26, 2019, provides employers with two new fit testing protocols for ensuring that employees' respirators fit properly. The new protocols are the modified ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol for full-facepiece and half-mask elastomeric respirators, and the modified ambient aerosol CNC quantitative fit testing protocol for filtering facepiece respirators. Both protocols are variations of the original OSHA-approved ambient aerosol CNC protocol, but have fewer test exercises, shorter exercise duration and a more streamlined sampling sequence.
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Sullivan Sworn in as Chairman of the OSHRC

On July 22, 2019, James Sullivan was sworn in as Chairman of the Occupational Safety and Health Review Commission. Chairman Sullivan was nominated by President Trump and unanimously confirmed by the U.S. Senate on August 3, 2017. Sullivan was previously a shareholder with Cozen O'Connor with a practice focused on labor and employment law and workplace safety and health matters. Sullivan is currently the only commissioner left on the panel, following the resignation of Chairwoman Heather MacDougall and term expiration of Commissioner Cynthia Attwood.
Read more.

U.S. Department of Labor Selects Ketcham as OSHA's DOC

On September 16, 2019, the Department of Labor announced that Scott Ketcham is the new director of the Occupational Safety and Health Administration's (OSHA's) Directorate of Construction (DOC). Since February 2017, Ketcham has served as the deputy director of DOC. Prior to this, Ketcham worked for 19 years as an OSHA acting deputy regional administrator, area director, assistant area director and compliance officer and manager in the Seattle, Dallas and Philadelphia regions. Prior to joining OSHA, Ketcham was a staff industrial hygienist with the U.S. Army Medical Activity at Bassett Army Hospital. He retired from the U.S. Army after 24 years of active and reserve service. The DOC provides workplace safety standards and regulations to ensure safe working conditions for the nation's construction workers.
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.

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