Possible Prison Time for Workplace Safety Violations

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The recent Memorandum of Understanding (the "**MOU**") between the U.S. Department of Justice ("**DOJ**") and Department of Labor ("**DOL**") reinvigorated the Worker Endangerment Initiative by "redoubling" the agencies' cooperative "efforts to hold accountable those who unlawfully jeopardize workers' health and safety," Deputy Attorney General Sally Quillian Yates announced on December 17, 2015.[1, 2] An accompanying memorandum sent to all 93 U.S. Attorneys across the country uses the relatively lower misdemeanor penalties of criminal sanctions under the Occupational Safety and Health Act of 1970 (the "**OSH Act**") as an impetus to urge federal prosecutors to couple workplace safety violations with other serious offenses carrying penalties ranging from 5 to 20 years imprisonment and significant fines.[3] Those offenses include conspiracy, false statements, obstruction of justice, witness tampering, and environmental and endangerment crimes. This development follows the Yates memo, which compels federal prosecutors to "combat corporate misconduct" by indicting culpable individuals at all levels, including managers, supervisors and corporate officers, in addition to indicting the companies themselves.[4]

The DOJ and the DOL are rededicating their efforts to criminally prosecute workplace violations by associating misdemeanor criminal and civil statutory violations with harsher criminal offenses found in Title 18 of the U.S. Code and with environmental offenses. However, this is not a new prosecutorial strategy. Perhaps the most systematic use of this coupling strategy involved a string of cases concerning McWane, Inc., a cast-iron pipe manufacturer.[5] In separate criminal cases in Alabama, New Jersey, Texas, and Utah between 2006 and 2010, in addition to indicting the subsidiary companies, federal prosecutors indicted a vice president, general manager, and mid-level managers and supervisors.[6] Those individuals were convicted and received prison sentences from 6 months to almost 6 years for Title 18 offenses—making materially false statements, obstructing justice, and conspiracy—and for violating various workplace safety and environmental statutes, including the OSH Act, the Clean Water Act, the Clean Air Act ("**CAA**"), and the Resource Conservation and Recovery Act.

More recently, in 2015, former owners and managers of a metal-salvaging company pleaded guilty to one criminal felony count for conspiring to violate the CAA's work practice standards by directing employees to remove and dispose of asbestos without the necessary protective equipment.[7] One former manager was sentenced to 5 years in prison. In another criminal prosecution, a former president pleaded guilty to violating the OSH Act and making a false statement regarding whether an employee received proper protection when handling hydrogen sulfide and was sentenced to 12 months in prison.[8] Similarly, following the trial of Massey Energy's former chief executive officer, on December 3, 2015, the jury returned a guilty verdict on a federal charge of conspiracy to willfully violate mine health and safety standards outlined in the Mine Safety and Health Act.[9] The executive faces up to one year in federal prison.

State prosecutors are also paying more attention to workplace safety violations. For example, according to the Los Angeles County District Attorney's office, Bumble Bee Foods has agreed to

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pay more than $6 million in fines for "willfully violating safety rules."[10] The criminal investigation was spurred by the discovery of a dead employee in an industrial oven.

Given the Justice Department's renewed focus on prosecuting individuals for workplace safety violations, company executives and managers across the United States should note the enhanced risks and take measures to prevent themselves from being in these crosshairs.

For more information, please contact the Haynes Boone attorney with whom you work or any of the following attorneys in the firm's OSHA and Workplace Disasters Practice Group:

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[1] http://www.justice.gov/opa/pr/departments-justice-and-labor-announce-expansion-worker-endangerment-initiative-address

[2] http://www.justice.gov/enrd/file/800526/download

[3] http://www.justice.gov/enrd/file/800431/download

[4] http://www.justice.gov/dag/file/769036/download

[5] http://www.justice.gov/enrd/us-v-mcwane-corp

[6] http://www.justice.gov/enrd/us-v-mcwane-corp

[7] http://www.justice.gov/opa/pr/owners-managers-former-salvage-operations-former-textile-plant-tennessee-sentenced-prison

[8] http://www.justice.gov/opa/pr/former-president-port-arthur-texas-chemical-company-sentenced-federal-crimes-related-employee

[9] http://www.justice.gov/usao-sdwv/pr/federal-jury-returns-guilty-verdict-blankenship-trial

[10] http://www.latimes.com/local/lanow/la-me-ln-bumble-bee-worker-killed-settlement-20150812-story.html

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