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OSHA'S NEW YEAR'S RESOLUTION

Previous OSHA-related e-alerts by Reinhart ([Current OSHA Enforcement Initiatives](#), [The OSHA Sheriff Is Back and He Has a Plan](#)) explained that the OSHA "Sheriff" has returned and is committed to pursuing enforcement initiatives. Now that the new year has begun, we write to sum up OSHA's recent activities and to explore OSHA's new year's resolution to accelerate its enforcement efforts in 2011.

Tougher OSHA Enforcement

OSHA officials have stated that OSHA is committed to enforcing its standards to protect workers, including issuing tougher citations and increasing penalties. OSHA's 2009 Enforcement Summary evidences OSHA's progress in meeting these goals: "violations issued against employers in fiscal year 2009 were up 2.8% since fiscal year 2005." Further, "the total number of serious and repeat violations were up 10.9% and 17.5%, respectively, over the same five year period." Half way through OSHA's 2010 fiscal year, OSHA reported that it had conducted 21,522 inspections (putting it on pace to exceed the 39,000 inspections that it conducted in the 2009 fiscal year). By mid-2010, OSHA also was on pace to issue more than 100,000 total citations during the 2010 fiscal year (which would exceed the previous record of 87,700 citations, set in the 2009 fiscal year, and would be significantly higher than the number of citations issued during 2008). Eighty-two percent of the 2010 citations were for "serious," "willful," or "repeat" violations – the highest rate for those types of violations in OSHA's history.

If this pattern of tougher enforcement continues, OSHA likely will conduct more inspections and issue more citations during 2011 than in previous years as OSHA pushes harder to achieve even better results in worker safety. So far, OSHA's effort seems to be paying off: from 2008 to 2009, there was a nine percent decline in the number of non-fatal occupational illnesses and injuries requiring workers to take days away from work to recuperate. OSHA means business and it is walking the walk, not just talking the talk.

OSHA'S Compliance Priorities

Employers would be well-served to comprehensively assess their compliance with all OSHA standards. However, they may want to begin their compliance efforts by focusing on the top ten OSHA standards cited for violations in the 2010 fiscal year:

1. Hazard Communication Standard
2. Electrical Safety Requirements
3. Abrasive Wheel Machinery
4. Respiratory Protection
5. General Duty (Catchall) Clause
6. Personal Protection Equipment
7. Walking/Working Surfaces, Stairs/Ladders
8. Machinery and Machine Guarding
9. Powered Industrial Trucks
10. Medical Services and First Aid

Employers with high injury and illness rates should address this issue sooner rather than later, because OSHA is particularly interested in such high risk sites. In March 2010, OSHA sent 15,000 letters to workplaces with high rates of injury and illness, which is a record. OSHA further noted that up to 4,500 workplaces could be targeted for inspection. Thus, having high injury and illness rates serves as a red flag for increased OSHA enforcement scrutiny.

Moreover, in April 2010, OSHA commenced its Severe Violator Enforcement Program (SVEP). The SVEP replaced OSHA's Enhanced Enforcement Program. The purpose of the step is to allow OSHA to focus its resources on employers who demonstrate their indifference to applicable OSHA standards by committing willful, repeated or failure-to-abate violations. Once on the SVEP list, an employer is subject to four OSHA enforcement tools: enhanced inspections, including one or more follow-up inspections; multifacility employers may be subject to inspections at any of their facilities in the country; notices of the SVEP case will be sent directly to company headquarters and corporate offices, as well as providing correspondence to and meeting with employee and/or union representatives and possible issuance of news releases to the public; and federal courts will be asked to enforce OSHA violations.

All employers should, therefore, conduct good safety practices and implement the necessary measures so as to not be included on OSHA's SVEP list.

Additional OSHA Enforcement Initiatives

- The Injury and Illness Prevention Program (I2P2) of OSHA requires employers to identify and address hazards in the work place, including planning, implementing, evaluating and improving processes and activities that protect worker safety and health. The goal is to have companies proactively identify and eliminate workplace hazards.
- OSHA proposes including a Musculoskeletal Disorders (MSD) column on the OSHA 300 recordkeeping log. Under the proposed rule, employers must follow recordkeeping criteria for determining if a MSD case is recordable on the 300 log. The MSD rule is expected to become final in February 2011.
- OSHA is revising its Chemical Hazard Communication Standard (HAZCOM) to follow the Globally Harmonized System (GHS) adopted by the United Nations in 2002. GHS is a single, harmonized system for classification of chemicals according to their health, physical and environmental effects, chemical labeling and material safety data sheets. This revised HAZCOM rule is expected to become final in August 2011.
- OSHA would like to update out-of-date permissible exposure limits (PELs) for workplace chemicals. Many PELs have remained unchanged for several years, although the health data indicates several chemicals pose hazards to workers at levels below those allowed by the current PELs. OSHA is working with the National Institute for Occupational Safety and Health to categorize the chemicals in a draft list according to their toxic characteristics and then to prepare a final list of PELs.

Summary

OSHA is enforcing its regulations on an increased scale. Employers need to be aware of OSHA's intensity and comply with OSHA's regulations, particularly related to higher risk workplaces. Failure to comply with OSHA's standards could result in inclusion on OSHA's SVEP list and/or OSHA citations. OSHA is likely to aggressively continue its enforcement push in 2011. Are you prepared if the OSHA Sheriff shows up at your door?

Please contact your Reinhart attorney or a member of Reinhart's Labor and Employment team if you have questions about these OSHA enforcement initiatives or other OSHA compliance matters.

