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OSHA Employer Alert

The Occupational Safety and Health Administration of the U.S. Department of Labor recently announced an enhanced enforcement policy for employers who, according to OSHA, frequently violate worker safety and health regulations.

OSHA's enhanced enforcement policy will focus on those employers who have received "high gravity" citations from the agency. High gravity citations are issued by OSHA when it considers an employer's violations to be of the highest level of severity. Under the new policy, OSHA field personnel will conduct more follow-up inspections of companies that commit safety violations of "the highest severity."

Companies that fail to correct violations may find themselves facing contempt of court orders from federal judges to force corrective action. The legal threat will be supported by a better-coordinated enforcement approach on the part of OSHA inspectors, who will be required to review more thoroughly incidents at all work sites owned by the same "overall corporate entity."

The new OSHA policy focuses on five specific areas: (1) follow-up inspections; (2) programmed inspections; (3) public awareness; (4) out-of-court settlements; and (5) federal court enforcement.

Details regarding the five targeted areas of enhanced enforcement are outlined below.

(1) Follow-Up Inspections

- On-site follow-up inspections will be conducted at all establishments that received an OSHA citation with "high gravity willful violations, multiple high gravity serious violations, repeat violations at the originating establishment, failure-to-abate notices, or a serious or willful violation related to a fatality."
- OSHA Area Directors may also conduct follow-up inspections at other sites to verify abatement of previously cited violations where OSHA has reason to suspect abatement may not have occurred.

(2) Programmed Inspections

- OSHA schedules programmed inspections through its Site Specific Targeting (SST) process. OSHA, through this new initiative, will:
 - begin to record the name of the overall corporate entity during all inspections; and
 - prioritize, within the primary and secondary SST list, all facilities under the same corporate identity that have been identified as receiving high gravity violations.

(3) Public Awareness

- For high gravity violations defined above, OSHA will mail a copy of the citation and notification of penalties to the employer's corporate headquarters.
- The agency will continue to issue local and national press releases on its enforcement actions.

(4) Out-of-Court Settlements

OSHA will include, as needed in its judgment, the following provisions in high gravity violation settlement agreements resolving OSHA citations out of court:

- Requiring employers to hire consultants to help change the safety and health culture in the facility.
- Applying the agreement corporate-wide.
- Including information on other work sites of the employer.
- Requiring employers to report to OSHA any serious injury/illness that requires outside medical care, and

consenting to OSHA inspections based on the report.

- Including language that the employer consents to entry of a court enforcement order under Section 11(b) of the OSH Act.

(5) Section 11(b) Summary Enforcement Court Orders

- As appropriate, OSHA will apply to federal courts for orders summarily enforcing the citations under Section 11(b) of the OSH Act. This includes citations that have been settled or have otherwise become final orders of the Occupational Safety and Health Review Commission.
- In those cases in which an order has been entered and the employer does not comply, OSHA will seek court contempt of court sanctions against the employer.

If you have questions about OSHA's enhanced enforcement policy or would like assistance in complying with OSHA regulations, please contact members of Reinhart's OSHA Practice Group Jeffrey P. Clark at 414-298-8131 or Daryll J. Neuser at 608-229-2222.

OSHA Practice Group E-Newsletter is an electronic publication of the law firm of Reinhart Boerner Van Deuren s.c., and is prepared by attorneys in its OSHA Practice Group. This publication is intended to afford timely notice to our clients and friends of current events in OSHA regulations and to provide general information about OSHA issues. It is not intended, nor should it be used, as a substitute for specific legal advice regarding particular factual situations.

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