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OSHA's Sheriff Is Still in the Saddle and Planning for the Future

With the reelection of President Obama, the regulatory actions of the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor in the next four years likely will follow the path it set during the previous four years. (See past Reinhart Headlines in Labor and Employment Law e-alerts: "Updated OSHA Regulatory Agenda," "OSHA Releases List of Most Violated OSHA Standards," "OSHA Revises Hazard Communication Standard," "OSHA: 2011 and Beyond," "OSHA's New Year's Resolutions," "The OSHA Sheriff is Back and He Has a Plan," and "Current OSHA Enforcement Initiatives.") This e-alert summarizes the recent past regulatory actions and proposed near-term future actions from OSHA's perspective. We also summarize the new Chemical Hazard Communication Standard training requirements that are to be completed by December 1, 2013.

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OSHA—Past and Future

Dr. David Michaels has been Assistant Secretary of Labor for OSHA for over three years. Needless to say, worker safety has been and continues to be a top priority for Dr. Michaels. He recently highlighted OSHA's accomplishments and identified its future target areas.

The Past

During the past few years OSHA has:

- Aligned OSHA's Hazard Communication Standard with the Globally Harmonized System of Classification and Labeling of Chemicals via a new rule (see next section of this e-alert and "OSHA Revises Hazard Communication Standard").
- Targeted the worst OSHA violators with the Severe Violator Enforcement Program (SVEP). The SVEP replaced the Enhanced Enforcement Program in 2010.
- Issued the largest penalty in OSHA history, and in July 2012, OSHA reached agreement with BP for it to pay a $13 million penalty for citations resulting from a 2009 inspection. Additionally, OSHA has initiated a record number of significant and egregious enforcement cases.
- Strengthened whistleblower protection, including provisions in the Affordable

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Care Act.
- Approved hundreds of new Voluntary Protection Programs (VPPs). The VPP recognizes employers who have implemented effective safety and health management systems and who maintain injury and illness rates below averages for their respective industries.
- Conducted approximately 41,000 federal inspections and an additional 51,000 inspections with state partners in the previous year.
- Provided free on-site compliance assistance to nearly 30,000 small and medium sized businesses.
- Responded to more than 200,000 requests for help.

The Future

Despite being pleased with OSHA's accomplishments to date, Dr. Michaels believes that "...we also have to acknowledge that there is much more work to be done."

New OSHA initiatives will:

- Educate employers to move from beyond merely reactive compliance to fostering a "culture of safety" that includes implementing programs to reduce injury, illness and fatality rates at workplaces (injury and illness prevention programs). OSHA also frowns upon employer incentive programs meant to discourage workers from reporting on-the-job injuries.
- Strengthen OSHA's whistleblower protection program to encourage workers to inform OSHA of hazardous work environments.
- Reduce worker exposure to hazardous substances by developing Permissible Exposure Limits (PELs) for chemicals with PELs that are either out of date or nonexistent.
- Develop new procedures, including those involving safe patient-handling methods, to reduce risks to health care workers. Health care workers in hospitals and other care facilities are subject to injuries, including musculoskeletal, at higher rates than many other industries.
- Continue programs to protect vulnerable employees, including those with limited English proficiency. OSHA wants these employees to understand the workplace hazards they face and to know their rights regardless of language issues. For example, OSHA has relaunched its Spanish language home page. Additionally, in 2012, OSHA translated a new campaign (to prevent falls in the construction industry) into several languages.
- Help respond to emergencies, such as Hurricane Sandy, in an effective and

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timely manner. Such efforts can bring guidance, assistance and resources directly to first responders and clean-up crews.

Hazard Communication Standard (HCS) Update

The first compliance deadline for OSHA's revised Hazard Communication Standard training requirements is December 1, 2013. Because the requirement involves planning and preparation, employers should be working on the requirements right now. Training components include:

- The new Safety Data Sheet (SDS) requirements. These requirements include providing information on each of the 16 sections under the Standardized SDS format.
- The new label elements requirements. These OSHA requirements include: name, address and phone number of the manufacturer, distributor or importer; product identifier; signal word; pictogram; hazard statement; precautionary statements; and how the employee might use the labels in the workplace.

OSHA requires employers to provide the information needed to fulfill the SDS and labeling training requirements in a manner and language that employees can understand. Employers must also provide the appropriate communications to illiterate employees. The OSHA Fact Sheet regarding training requirements for the revised HCS is found on the OSHA website.

Summary

As we have noted in past e-alerts, OSHA has been aggressive in implementing and enforcing its rules over the past three years. It is likely that OSHA will continue this approach in the future, so attention to current and new OSHA requirements is imperative.

We will continue to update you as significant OSHA-related regulatory developments occur. In the meantime, we will be pleased to answer your questions and address any concerns that you may have regarding OSHA compliance issues and OSHA's enforcement efforts.

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