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OSHA: 2011 and Beyond

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2011 is now well underway. As predicted, OSHA has been busy. As we noted in our three preceding e-alerts, (Current OSHA Enforcement Initiatives, The OSHA Sheriff Is Back and He Has a Plan, OSHA's New Year's Resolution) the OSHA "Sheriff" is back —personified by the agency's aggressive Administrator, Dr. David Michaels — and is extending its compliance and enforcement initiatives to several OSHA regulations. This e-alert discusses three recent OSHA regulatory developments.

OSHA's Proposed 2012 Budget

OSHA's 2012 Fiscal Year (FY) budget request reflects OSHA's priorities: further developing its standards, and inspecting workplaces with high injury, illness and fatality rates. Specifically, OSHA's proposed budget requests $583,386,000 and 2,387 full-time equivalent employees (FTE). This exceeds the 2010 FY appropriated level by $24,766,000 and 52 FTE, an approximately 4% increase. Specific program increases in the FY 2012 OSHA budget request include:

- $2,400,000 to develop the Injury and Illness Prevention Program (I2P2) rule.
- $4,000,000 to expand OSHA's regulations to address workplace safety and health risks.
- $7,714,000 and 25 FTE to hire more compliance safety and health officers (CSHO).
- $6,000,000 and 45 FTE to enhance OSHA’s whistleblower protection program.
- $1,500,000 to hire more State Plan CSHO and fill vacant staff positions.
- $2,250,000 to bolster outreach to workers and target high hazard industries.
- $650,000 and 2 FTE to improve the CSHO training curriculum for identifying potential employee misclassifications by employers.

On the other hand, some members of Congress want to cut to OSHA's 2011 FY budget and 2012 FY budget. Time will tell how the budget shakes out. Meanwhile, OSHA will likely continue with its vigorous compliance and enforcement actions.

Personal Protective Equipment (PPE) Enforcement Guidance

OSHA's updated compliance directive, CPL 02 01 050 Enforcement Guidance for Personal Protective Equipment (PPE) in General Industry (Enforcement Guidance),

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took effect February 10, 2011. It replaces the agency's 1995 PPE Inspection Guidelines. OSHA's new Enforcement Guidance is based on several years' worth of modifications to the PPE standard, including final rules requiring employers to pay for PPE and updating the PPE standard based on national consensus standards.

The Enforcement Guidance instructs OSHA personnel on the agency's interpretations of its PPE standard and on its enforcement procedures, lays out enforcement policies that reflect previous judicial decisions relating to PPE, and guides employers on how to use PPE to comply with the most recent national consensus standard. The Guidance also gives a "heads up" to employers regarding OSHA's expectations for when an employer must pay for its employees' PPE. Examples of PPE that an employer must provide "free" to its employees include:

• Metatarsal foot protection
• Rubber boots with steel toes
• Non-prescription eye protection
• Chemical-resistant gloves/aprons/clothing
• Prescription eyewear inserts/lenses for full face piece respirators and welding for weather-related protection) helmets
• Items used to prevent exposure to infectious agents (*e.g.*, aprons, lab coats, goggles, disposable gloves, shoe covers) in medical/laboratory settings
• Firefighting protection (helmet, gloves, boots, proximity suits, full gear) suits
• Non-specialty gloves for protection from
• Rubber insulating gloves
• Hard hats/Bump caps• Welding protection
• Hearing protection
• Laser safety goggles
• Goggles
• Barrier creams (unless used solely
• Respirators
• Face shields
• Personal fall protection
• Reflective work vests
• Ladder safety device belts
• Encapsulating chemical protective
• Self-contained breathing apparatus/dermatitis, severe cuts/abrasions atmosphere-supplying respirators (escape only)

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On the other hand, employers need not pay for: items worn only to keep clean or warm that are unrelated to safety or health considerations; sunglasses; sunscreen; ordinary rain gear; and items worn for patient safety and health but not for employee safety and health.

Vapor Intrusion

Increasingly, vapor intrusion is becoming an important regulatory issue at worksites where chemical contaminants have been released or have the potential for release to the ambient environment. Hence, the Wisconsin Department of Natural Resources (WDNR) recently published *Addressing Vapor Intrusion at Remediation and Development Sites in Wisconsin*. In this December 2010 document, the WDNR specifically deferred to OSHA on inhalation standards for operating facilities. OSHA standards and other occupational inhalation exposure guidelines apply to indoor occupational exposure to contaminants of concern used in a manufacturing or commercial process as long as the entity uses the chemical in question.

The important point is that OSHA has promulgated indoor air quality standards that need to be addressed at affected facilities. Some of these standards include permissible exposure limits for specific chemicals established by OSHA. An employer needs to be aware of these OSHA standards and provide the appropriate PPE, engineering processes and training to safeguard its employees from airborne chemical exposures.

What Next?

The OSHA "Sheriff' is not going away. We will continue to update you as new OSHA regulatory developments occur. In the meantime, please contact any member of Reinhart's Labor and Employment Practice with questions or concerns you might have about OSHA's on-going compliance and enforcement efforts.

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