



# **The New Enforcement-Driven OSHA**

Publication

7.01.09

Many safety activist blogs and news media reports state that the Occupational Safety and Health Administration (OSHA) is broken and the Obama administration must fix it. They cite the decrease in OSHA funding (adjusted for inflation) and a decrease in the number of OSHA inspectors as proof change is needed—and dispute the fact that injury, illness and fatality rates in the workplace are the lowest in recorded history. President Obama's selection of Rep. Hilda Solis (D-Calif.) as Secretary of Labor is a clear signal to the businesses community that there will be substantial changes at the U.S. Department of Labor and a clear departure from the Bush administration's policies.

This change will not be subtle, especially at OSHA. Gone are the days of strong emphasis on compliance assistance for employers. Substituted will be a focus on enforcement and rulemaking. In fact, Secretary Solis stated in a speech to the AFL-CIO Executive Committee that she was "bringing back enforcement to the Department of Labor." Voluntary Protection Programs and other alliances and partnerships will not disappear, but they will not receive the same attention as during the Bush administration.

## **Enforcement**

Secretary Solis' first change at OSHA was to appoint Jordan Barab as acting assistant secretary of labor. In this role, Barab already has testified twice before Congress and announced support for several congressional bills to expand OSHA enforcement areas. In addition, OSHA already has received additional funding earmarked for enforcement.

The next four years will continue the trend of increased scrutiny of businesses' safety and health practices. The Bush administration conducted more OSHA inspections than the Clinton administration, and more inspections are on the horizon as the Obama administration continues to ramp up the number of inspectors. Additionally, businesses can expect an increase in the number of citations and the amount of penalties, as well as a number of new national, regional and local emphasis programs covering different industries (such as the chemical industry) and other safety and health issues.

## **Rulemaking**

Another area that could see big change is standards and rulemaking. Critics complained OSHA did not do much to promulgate safety and health standards in the past eight years and that its regulating agenda was basically cut in half at the beginning of the Bush administration. The

construction industry can expect to see several final OSHA standards in late 2009 or early 2010—the most high profile of which include the long-awaited crane and derrick standard and the confined spaces in construction standard. Others likely will be added to the list as proposals, including the global harmonization standard and the walking/working surfaces standard. The Obama administration should be able to make progress on these proposed and final standards because the majority of the work was done during the Bush administration. In addition, new leadership likely will attempt to revive the Clinton administration's ergonomics standard, as well as initiate a push to lower many of the current permissible exposure limits on chemicals.

Finally, the new administration may attempt to make OSHA's recently updated voluntary safety and health management system guidelines a mandatory standard. However, any attempt to mandate a one-size-fits-all safety and health management system for every employer is likely to fail because it would be either economically infeasible or so generic that it would be ineffective.

No matter what changes come to OSHA in the next four years, the ultimate goal still will be for each employee to return home safely every night to their families and loved ones.

---

This article appeared in the July 2009 issue of *Construction Executive*.

### ***Related People***



**Edwin G. Foulke, Jr.**  
Partner  
404.240.4273  
[Email](#)