



Top 3 Mine Safety Changes To Expect Under The Biden Administration

Insights

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With Joe Biden now being called the president-elect, we can expect changes to the Mine Safety and Health Administration (MSHA) once he takes office in January 2021. Right now, while there is speculation as to who will be the next Secretary of Labor and who will be the next Assistant Secretary of Labor for MSHA, we can be confident that the expansion of workers' rights, a key focus for the Biden administration, will include some significant changes in MSHA's focus. Now is the time for operators to prepare for a shift from MSHA's enforcement posture over the past four years. Here are the top three significant changes we can expect from MSHA under a Biden administration:

1. **MSHA May Push To Implement A COVID-19 Emergency Temporary Standard**

You may recall the proposed mine safety legislation from June 2020 – the COVID-19 Mine Worker Protection Act – that outlined a proposed Emergency Temporary Standard (ETS). The USW and UMWA also petitioned MSHA for rulemaking. Although nothing came of it under the Trump administration, it would not be surprising to see the Biden administration resurrect this proposal.

As proposed, the ETS would require operators to provide miners the necessary Personal Protective Equipment (PPE), medical supplies, and other applicable supplies determined necessary by the Secretary to reduce and limit exposure to COVID-19 in coal or other mines. This version of the ETS would also require MSHA to develop and issue a comprehensive infectious disease standard within two years.

As petitioned by the UMWA, the infectious disease standard could create a permanent standard to protect miners from occupational exposure to infectious pathogens, including novel pathogens. This mandatory standard could incorporate the guidelines the CDC and OSHA have developed to prevent the transmission of infectious agents in occupational settings. For COVID-19, this OSHA/CDC guidance has focused on washing hands, sanitizing PPE/surfaces, wearing face coverings, and maintaining social distancing where possible. A permanent standard could also require recording and the reporting of illnesses to MSHA.

The UMWA also sought to create an anti-discrimination provision prohibiting operators from taking any adverse action against miners for various safety-related activity. Specifically, they would receive protection for reporting a good faith concern about a workplace infectious disease

hazard or voluntarily using personal protective equipment with a higher level of protection than what an operator may provide.

2. **MSHA Will Push Its Regulatory Agenda**

The Powered Haulage and Silica proposed rules have been delayed for months, presumably awaiting the election's outcome, but they could be ready for publication in the Federal Register shortly after January 2021. There may be some delay if MSHA, under new leadership, makes changes to the rules before rolling them out.

There were also efforts under the Obama administration to modify how penalties are calculated and to change the conferencing procedure. It is also possible MSHA foregoes the rulemaking process and works to implement policy guidance as rules.

3. **Enforcement Will Increase**

During his campaign, Biden repeatedly called for increased workplace safety inspections to combat the spread of COVID-19. This is the hallmark of an administration well positioned to embrace regulatory action and compliance inspections. Conceivably, MSHA might seek to create COVID-19 requirements by forcing changes in training or ventilation plans.

Currently, we are under half of the enforcement level we saw under the Obama administration. Miner discrimination cases and agent liability cases are almost non-existent. Biden's MSHA will reverse course and emphasize miner protections, increasing the number of special investigations into miner complaints and potential agent liability.

Conclusion

MSHA will almost certainly return to form and be more aggressive under the Biden administration. Operators should continue to follow all CDC and Department of Labor guidance for COVID-19 and should review current policies, train supervisors, and prepare for robust inspections and investigations while MSHA pushes miner safety in the workplace.

MSHA will once again become a miner safety focused agency, and that can lead it to push the boundaries of what is legally permissible under existing standards and regulations. Operators should review their enforcement history now and act on conditions repeatedly cited. As always, do not hesitate to reach out to your lawyer or any member of the [Fisher Phillips Mine Safety & Health Practice Group](#) with any questions.

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