

TOP 4 PREDICTIONS ABOUT WHAT OSHA AND MSHA WORKPLACE SAFETY PROFESSIONALS CAN EXPECT FROM THE NEW TRUMP ADMINISTRATION

Insights
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Our firm's Workplace Safety Practice Group has provided some general perspectives on [what employers can expect under the next Trump administration](#) – but it's time for a deeper dive that OSHA and MSHA safety professionals will appreciate. Everyone knows that President Trump and his new leadership will reverse course from the Biden administration to scale back federal regulatory oversight on workplace safety issues. What exactly can we expect? We teamed up with our Government Relations insiders to develop an Insight with our top four predictions covering what you'll see from workplace safety agencies in 2025 and beyond.

1. Proposed Heat Standard Will Melt Away

We expect that the [proposed heat safety rule](#), originally projected to become final in early 2025, will be scaled back dramatically, delayed, or scrapped altogether. The Trump administration has several potential options available to halt the rule.

Team Up With Federal Lawmakers to Quickly Kill the Rule

[The Congressional Review Act \(CRA\)](#) offers a quick way for a new president, with the consent of Congress, to undo certain regulatory actions implemented by the previous administration. Using the procedures outlined in the law, Congress may enter a joint resolution of disapproval to repeal a final rule. If the President concurs, then the agency is also prohibited from issuing a substantially similar rule in

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the future – unless, of course, Congress reverses course and later gives authorization.

We know the U.S. Senate will be under Republican control come January. Votes are still being tallied to determine whether Republicans will win a narrow majority in the House. If they do, the CRA presents an appealing mechanism for the incoming administration right away.

Request Agency to Halt Progress

Recent incoming presidential administrations have issued memoranda to federal agencies asking them to halt progress on regulations that were underway during the prior administration so that the new administration can review them. This allows the new administration to decide which regulations to proceed with and which ones it no longer wishes to pursue.

If the heat rule has not already been finalized (which appears likely to be the case based on the timing discussed below), the incoming Trump administration may be able to use such a memorandum to prevent OSHA from issuing a final rule. It can then pursue a different approach more in line with the new administration's priorities.

So where does the heat standard stand as of today? The Notice of Proposed Rulemaking (NPRM), proposed rule, and request for public comments were all [published in the Federal Register](#) on August 30, and the comment period remains open through December 30. A number of industry groups have approached OSHA requesting to extend the public comment deadline through March 31, 2025, to provide sufficient time to analyze the impact of the new rule. Such an extension, if granted, would also provide interested employee and employer groups with time to work with the new administration to create a workable standard.

The effective date of the final rule will be 60 days after publication of the final rule in the *Federal Register*, and employers will be required to comply with all requirements of the standard 150 days after the final rule is published.

Other Obligations Remain

But just because the heat standard may never see the light of day doesn't mean employers can ignore heat-related obligations. First, OSHA's [National Emphasis Program for](#)



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Outdoor and Indoor Heat-Related Hazards remains in place until April 2025.

For many employers, OSHA state plans have created heat-related standards that they need to comply with. After all, states remain free to continue adopting and following their own heat regulations, even if the federal OSHA heat standard is scaled back or withdrawn. State plans are OSHA-approved workplace safety and health programs operated by individual states or U.S. territories. They are monitored by OSHA and must be at least as effective as OSHA in preventing work-related injuries, illnesses, and deaths.

The following states currently have, or are considering, their own heat standards:

- California
- Colorado (*Colorado is covered by federal OSHA, but has a state-level heat-related regulation applicable to agriculture*)
- Maryland
- Minnesota
- Nevada (*Nevada OSHA does not currently have its own heat regulation but is considering adopting one*)
- Oregon
- Washington

2. Walkaround Rule Will Face Significant Court Obstacles

OSHA issued a final rule earlier this year on the so-called “walkaround rule,” which allows third parties (including union officials) to accompany OSHA compliance, safety and health officers (CSHOs) on an inspection of a workplace if an employee requests them to do so. The rule went into effect on May 31.

Employer industry groups have expressed significant concerns regarding the rule, particularly regarding the lack of clarity around how many representatives can join the inspection, and the lack of guidance to arm CSHOs in determining how to prioritize, approve, and manage employee requests. As previously discussed, the rule has

also generated controversy because it would allow workers to designate a union representative to accompany a CSHO during a facility walkaround – regardless of whether the representative is the company’s employee or the facility is a union shop. So what are the avenues of attack to expect against this rule?

Don’t Expect CRA Success

For a few reasons, you shouldn’t expect the same sort of CRA challenge against this rule, even if Republicans control both chambers of Congress. Rep. Mary Miller (R-IL) already mounted a [CRA challenge to the walkaround rule](#) in May, but lawmakers took no action on her Resolution (H.J. Res. 147) after it was referred to the House Committee on Education and Workforce.

The 60-day “lookback” period under the CRA will expire before the end of session for the 118th Congress. This means that a new CRA Resolution cannot be introduced for the walkaround rule during the incoming 119th Congress. And, like all legislation, the current Resolution will expire at *sine die*, when the current Congress adjourns for the last time.

Instead, Look to Court Challenges

Successful challenges to the walkaround rule are more likely to come through the court system.

A lawsuit pending in the United States District Court for the Western District of Texas appears to present the more viable alternative to block or withdraw the rule entirely. [In that case, business groups](#) argue that it exceeds OSHA’s authority in that it conflicts with the National Labor Relations Act (NLRA) by permitting union organizers to represent employees in non-union workplaces.

Other legal arguments raised against the walkaround rule in the Texas case include:

- It violates the Fifth Amendment by effecting a “taking,” and Congress has not authorized OSHA to appropriate employers’ property.
- It violates the Regulatory Flexibility Act by not following the required regulatory flexibility analysis.

- It violates the Administrative Procedures Act (APA) by presenting an unsupported analysis claiming that the rule would impose little to no cost to employers, failing to address important considerations flagged in public comments (including how to protect confidential business information and determine the maximum number of employee representatives who may accompany CSHOs on inspections), and ignoring other alternative approaches.
- It's less about workplace safety and more about allowing union organizers to gain access to nonunionized workplaces to advance their organizing campaigns.

Expect the Trump administration to weigh in on the validity of the walkaround rule even before the Texas court rules.

Possible Settlement to Resolve the Matter?

One additional option is that the incoming Trump administration could settle with the plaintiffs in the pending Texas lawsuit, and agree that abandoning the rule is the appropriate remedy under the APA. "Vactur" allows lower federal courts to vacate regulations that are deemed unlawful under §706(2) of the APA. If the court agreed, the walkaround rule would immediately become void.

Other Considerations for Employers

See our May 2024 insight on "[Frequently Asked Questions for Employers About OSHA's New Final Rule on 'Walkaround' Inspections](#)" for input on how the rule will impact OSHA state plans and other topics. Within six months of any final rule's promulgation date, states with OSHA-approved plans are required to adopt regulations that are identical to or "at least as effective" as OSHA's new final rule, unless they demonstrate that their existing requirements are at least as effective in protecting workers.

3. Expect The Pendulum to Swing Again on OSHA's Electronic Recordkeeping Requirements

Employers have gotten used to the status of the OSHA electronic recordkeeping rule flip-flopping back and forth over the past decade.

- In 2016, the Obama-era OSHA issued the "Improve Tracking of Workplace Injuries and Illnesses" final rule, mandating companies with 250 or more employees to

electronically submit injury and illness data from OSHA Forms 300, 300A, and 301.

- In 2019, a [Trump-era OSHA final rule rescinded that requirement](#).
- Things flipped once again [in July 2023](#) when Biden's OSHA again released a final rule requiring certain large employers to electronically submit OSHA injury forms, with the rule becoming effective in [January 2024](#). The updated rule required establishments with 100 or more employees in certain designated industries to electronically submit Forms 300 and 301 to OSHA each year.

So what can we expect in 2025? We expect that the new OSHA leadership will again re-visit electronic submission requirements after the new administration takes office, and you can expect the pendulum to swing back as it did under the first Trump administration. The agency could once again put electronic submission requirements back on the shelf.

4. Slower Changes at the Mine Safety and Health Administration

We forecast the following for the Mine Safety and Health Administration (MSHA) under the Trump administration:

What Won't Change

- The **structure of MSHA enforcement** will not change. Per the Mine Act, all underground mines are required to be inspected in their entirety four times per year and all surface mines two times per year. It would take an act of Congress to change the mandatory enforcement scheme – and that is not foreseeable in the near future.
- MSHA hired a number of new personnel during the Biden administration due to post-COVID retirements and other factors. Additionally, a number of employees were promoted to district and national leadership roles. These employees are not political appointees, so they will **remain in their current roles**. As a result, the vast majority of MSHA personnel that mine operators encounter on a day-to-day basis will not change.
- Commissioners [Mary Lu Jordan](#), [Timothy J. Baker](#), and [Moshe Z. Marvit](#) of the Federal Mine Safety and Health Review Commission, all of whom have strong union

backgrounds, will **continue to fill out their terms**. While two industry-focused Commissioners could be appointed, the Commission will continue to have a union-centered majority for the foreseeable future.

- **MSHA will not repeal existing standards.** The Mine Act requires that no new standard diminish safety relative to an existing standard, so MSHA effectively lacks the power to eliminate or reduce the requirements of existing standards.

What Will Change

- **A change in approach on discretionary enforcement.** While mandatory inspections and other functions will not change, MSHA has numerous discretionary tools at its disposal. During the current administration, MSHA has “used every tool in the toolbox” with initiatives such as impact inspections and spot inspections focused on dust exposure. It is unlikely that these initiatives will continue under the Trump administration. We expect a pull-back on enforcement such as what we saw during the last Trump administration.
- **The recently promulgated Silica Rule will not be rescinded.** But might MSHA attempt to issue revisions to certain components of that rule? Such an attempt would undoubtedly be challenged as a diminution of safety so any revision to the Silica Rule would need to be able to survive such a challenge.

Keep An Eye On

What cases will the Solicitor’s Office pursue at the appellate level and what positions will they take? The future of big ticket items such as Pattern of Violations, the proper framework for S&S, and the proper test under 105(c) may all be decided in appellate litigation. Will the Solicitor’s Office representing MSHA under a new administration take the same positions as they have for the past four years – or will those positions change?

Conclusion

We will continue to monitor updates to OSHA and MSHA regulations, along with other workplace safety topics, as we receive additional updates about President-elect Trump’s transition plans. If you have any questions, contact the

authors of this Insight, your Fisher Phillips attorney, or any member of our [Workplace Safety Practice Group](#) or [Government Relations Team](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on OSHA issues.