



OSHA WITH HER: STRONGER TOGETHER UNDER HILLARY? What the Occupational Safety & Health Administration Might Look Like Under a President Clinton

Insights
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The general election is only days away. On Tuesday, November 8, American voters will finally determine if Hillary Clinton or Donald Trump will succeed Barack Obama as our nation's president.

Either Ms. Clinton or Mr. Trump will be sworn into office on January 20, 2017. In the four years (or more) that follow, one of these candidates will be in charge of the executive branch, which includes determining in what manner and how aggressively federal government agencies, like the Occupational Safety & Health Administration (Fed-OSHA), will enforce their regulations during his or her tenure. This is the second blog post in a series predicting what employers can expect under the next President; we covered Mr. Trump's likely approach to Fed-OSHA in an earlier publication found [here](#).

While it's almost impossible to forecast what she might do if elected, here's a prediction as to what Fed-OSHA might look like if Clinton is successful on November 8:

1. The Number of OSHA Enforcement Inspections *Will Continue to Decline.*

Yes, you read that right. Believe it or not, the number of OSHA inspections conducted under President Obama appears to be lower than any other time since at least the late 1980s. Expect this trend to continue under a President Clinton.

As noted in our article on Fed-OSHA under Mr. Trump, as of [January 1, 2015](#), employers have been required to report various workplace incidents to OSHA; they include an amputation or a single in-patient hospitalization within 24 hours of learning of the incident. This mandatory reporting requirement is in addition to the previous requirement of reporting fatalities or catastrophic incidents (more than three in-patient hospitalizations) within 8 hours.

The amputation reporting requirement has led to a significant increase in the number of "referral-based" inspections conducted by OSHA. Our firm's workplace safety attorneys have noticed that the spike of amputation referrals has strained OSHA's resources. Compliance safety and health officers (CSHO) now appear to be conducting fewer programmed or planned inspections (which are conducted at high hazard worksites appearing on an "emphasis plan" list) because they are responding to amputation referrals and lack the time to perform additional responsibilities.

Perhaps just as surprising to some, a review of the number of OSHA inspections conducted since the late 1980s revealed that OSHA actually conducts fewer inspections (at least in certain parts of the country) when a Democrat occupies the oval office compared to when a Republican is president. As an example, below is a summary of OSHA inspections performed since 1988 in OSHA Region IV, which covers the Southeastern U.S.:

**Region IV (TN, SC, NC, KY, GA, FL, MS, AL) OSHA Enforcement Inspections
(Includes Inspections Conducted by both Fed-OSHA and State Plans)**

1989 (George H.W. Bush) – 20,157
1990 (Bush) – 18,723
1991 (Bush) – 17,195
1992 (Bush) – 15,871**TOTAL: 71,946**
AVG/YEAR: 17,986

1993 (Bill Clinton) – 16,275
1994 (Clinton) – 16,315
1995 (Clinton) – 13,993
1996 (Clinton) – 13,337
1997 (Clinton) – 15,830
1998 (Clinton) – 14,750
1999 (Clinton) – 15,727
2000 (Clinton) – 14,685**TOTAL: 107,575**
AVG/YEAR: 13,446

2001 (George W. Bush) – 16,485
2002 (Bush) – 17,349
2003 (Bush) – 17,812
2004 (Bush) – 17,433
2005 (Bush) – 16,863
2006 (Bush) – 17,941
2007 (Bush) – 16,865
2008 (Bush) – 17,500**TOTAL: 138,248**
AVG/YEAR: 17,281

2009 (Barack Obama) – 17,658
2010 (Obama) – 16,799
2011 (Obama) – 16,994
2012 (Obama) – 16,274
2013 (Obama) – 15,574
2014 (Obama) – 14,626
2015 (Obama) – 13,253

2016 (projected) (Obama) – 13,584 **TOTAL: 124,762**

AVG/YEAR: 15,595

Given this history and recent cuts to Fed-OSHA's budget, we believe the decline in OSHA inspections will continue under a President Clinton. Expect around 13,000 OSHA inspections a year to take place in Region IV in 2017, and fewer inspections to occur nationally.

2. An Expansion of OSHA's Consultation Services.

On the campaign trail, Ms. Clinton has noted that "we need to invest in education and job training – the foundations of success. We'll rebuild our infrastructure, invest in clean energy and manufacturing, create millions of good-paying middle class jobs, and rein in college costs and out-of-pocket health expenses."

Statements like these imply that Ms. Clinton may direct Fed-OSHA to ramp up and expand its consultation programs – or on-the-job safety training. Focusing on safety consultation will also allow Fed-OSHA to counterbalance the declining number of enforcement inspections.

Focusing on safety consultation services will help keep employees safe, provide job training, and hopefully limit the need for additional enforcement inspections. Labor unions, who have historically supported Democratic candidates, will also back this effort.

3. A Continuation of Several New Fed-OSHA Regulations/Initiatives.

Under the current Democratic administration, Fed-OSHA recently passed several rules that will significantly impact employers. There is no reason to believe that Ms. Clinton would change or alter these rules, and thereby effect the legacy of Fed-OSHA under President Obama. The new rules are set forth below:

a. Fed-OSHA's Increased Penalties. Effective August 2, 2016, Fed-OSHA increased its maximum penalty amounts by over 80% (the top penalty for a serious citation is now \$12,471 and \$124,709 for willful/repeat citations). While Fed-OSHA's penalty increases are already in place, many state plans' penalty amounts are codified in state statutes, require legislative action to amend, and to date haven't been changed. While maintaining this increase, Clinton may work with the state plans to increase their maximum penalties and ensure uniformity with Fed-OSHA.

The rule's requirement that Fed-OSHA's maximum penalties increase each year to account for inflation will also likely stay in effect under a President Clinton.

b. New Electronic Reporting Requirements. Beginning July 1, 2017, Fed-OSHA will begin requiring certain employers (including those with more than 250 employees at a single establishment) to begin, among other things, reporting injury and illness information to Fed-OSHA, which will then post this information online for public viewing on its website.

Clinton likely will agree with Fed-OSHA's contention that the new electronic reporting requirements will force certain employers into compliance due to the fear of having the effectiveness of their safety program in public view.

We cannot predict exactly how a President Clinton would manage the federal agencies. Based on her comments and the literature made available by her campaign, however, Clinton likely will focus Fed-OSHA's efforts on safety consultation, and retain its recent rules on increased penalties and electronic reporting requirements. We also expect enforcement inspections to continue to decline under a Clinton administration.

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