Senate Approves New Workplace Safety Agency Leaders: What Employers Can Now Expect From OSHA and MSHA

Insights
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When the Senate approved David Keeling to take over as the head of OSHA and Wayne Palmer to lead MSHA yesterday, it ushered in a new day for employers across the country. You can expect to see workplace safety policies, priorities, and regulations shift over the course of the next few years now that new leadership is officially in place. How will these moves translate into action? What should employers expect? And more importantly, what should you do? Here is your guide to these changes.

Overview of David Keeling (OSHA)

David Keeling is now officially in his role of Assistant Secretary of Labor for the Occupational Safety and Health Administration (OSHA) after President Trump nominated him back in February. Here's a quick overview of his background.

- **UPS Experience:** Keeling started as a package handler at UPS in 1985 and worked his way up through multiple safety leadership roles. His career there spanned nearly four decades, giving him firsthand knowledge of the challenges in ensuring worker safety at a massive logistics company.
- **Amazon Safety Leadership:** From 2021 to 2023, Keeling served as Director of Road and Transportation Safety at Amazon, furthering his expertise when it comes to workplace safety in high-energy environments.
- **Industry Reputation:** Keeling has received praise from employers and the business community for his technical expertise and practical understanding of workplace safety. The Coalition for Workplace Safety, for example, submitted a letter of support noting that his experience provides him with a "practical view of how to improve workplace safety." The Teamsters have also backed his nomination, posting that they "applaud" Keeling's selection as someone who "started in the trades and understands the risks facing working Americans today."

What Can Employers Expect From OSHA Under Keeling?

- **Probable Rollback of Electronic Injury Reporting Rules** – The status of the OSHA electronic recordkeeping rule has flip-flopped back and forth over the past decade – and it's time for another swing of the pendulum under Keeling's leadership. The Biden-era OSHA expanded requirements for companies to electronically submit injury and illness data, which was often made public, and even issued an updated compliance directive in the waning days of the administration. A Keeling-led OSHA is expected to reverse or scale back these requirements to reduce regulatory burdens.

- **End of Public Data Releases** – The Biden administration provided a parting gift to employers in December 2024 by releasing comprehensive details on nearly 900,000 reported workplace injuries and illnesses recorded by OSHA the prior year. This increased scrutiny caught many employers off guard. However, with Keeling leading the agency, we don't expect another public data dump anytime in the near future.
- **Heat Illness Prevention Regulations Face Uncertain Future** – OSHA has been working on a nationwide heat safety standard for quite some time to protect outdoor and warehouse workers from extreme temperatures. This initiative has faced business opposition due to compliance costs. The agency moved forward with the proposal by holding a summer hearing and a post-hearing comment period that just wrapped on September 30. In the latest regulatory agenda released early last month, OSHA indicated that it intends to develop a final heat rule that "adequately protects workers, is feasible for employers, and is based on the best available evidence." Now that Keeling has assumed the helm, expect OSHA to carefully review comments submitted during the rulemaking phase and either significantly revise the "one size fits all" nature of the current proposed standard, or scrap it altogether. You shouldn't be surprised if you instead see the agency focus on the Water. Rest. Shade. prevention program enforced through the General Duty Clause. Remember that state-level rules (e.g., in California, Nevada, and Maryland) will continue to apply.
- **Scrapping the 'Union Walkaround Rule'** – A major policy change under President Biden allows employees to bring third-party representatives (including union officials) along for OSHA inspections – even in non-union workplaces. This rule has generated controversy, and a Keeling-led OSHA is expected to work towards reducing its influence, if not removing it altogether. We could also see the agency stand aside as legal challenges brought by business groups work their way through the court system.
- **Small Business and Quick-Fix Relief** – OSHA adjusted its penalty guidelines a few months ago to give small employers and safety-conscious businesses a financial break, and we expect Keeling to continue this initiative. Employers with 25 or fewer employees are now eligible for a 70% penalty reduction (up from the previous cap of 10 employees), those that immediately fix a hazard identified during an inspection can receive a new 15% reduction, and those with clean safety histories can get a 20% reduction.
- **Rolling Back Reporting on Musculoskeletal Disorders (MSDs)** – While the Biden-era OSHA released a memorandum that clarifies when employers are required to record and report such injuries, OSHA has already taken steps to jettison that memo. We expect the agency to further that process under Keeling's leadership.
- **Reshaping OSHA's Inspection and Enforcement Priorities** – During Trump's first term, OSHA slashed the number of inspectors it deployed to oversee more than 8 million workplaces to

the lowest numbers on record. While those numbers rose under the Biden administration, we expect to see further streamlining under Keeling's leadership. We expect him to face pressure to modernize enforcement efforts, so you'll see OSHA focus on high-risk industries (construction, manufacturing, logistics, warehousing, etc.) and ease compliance burdens on lower-risk sectors.

- **Lowered Enforcement in High-Risk Industries** – This past summer, OSHA proposed a new rule that would restrict its own ability to regulate inherently risky work. Keeling will lead the agency as it pushes the rule forward to more narrowly apply the "General Duty Clause" in the sports, entertainment, and other industries.
- **State-Level Regulations Will Become More Important** – With potential federal rollbacks, states with their own OSHA plans (such as California, Washington, and Oregon) may take the lead in implementing stricter safety rules. Employers operating in multiple states will need to track and adapt to a patchwork of state-specific compliance requirements.

Overview of Wayne Palmer (MSHA)

Wayne Palmer, the new Assistant Secretary of Labor for Mine Safety and Health, has a track record both within the federal government and in private business.

- He served as a part of the Trump transition team within the Department of Labor during the first few months of the administration.
- Before that, Palmer was executive vice president of the DC-based Essential Minerals Association, a trade association representing the industrial minerals industry.
- He also served as a political appointee within MSHA during the first Trump administration where he served as interim Assistant Secretary and Principal Deputy Assistant Secretary, and has years of experience as a congressional staffer.

How Will Things Change for Mining Operations Under Palmer?

The first thing employers should understand is that much of MSHA won't change regardless of who is in charge. The MSHA enforcement scheme is established by statute. The Federal Mine Safety and Health Act mandates that all underground mines be inspected in their entirety four times per year and all surface mines be inspected in their entirety twice a year.

MSHA is also required to investigate hazard complaints, whistleblower complaints, and accidents. Regardless of who sits in the Assistant Secretary's seat, MSHA will continue to be a constant regulatory presence in the lives of mine operators.

What Can You Expect?

But with Palmer now in charge of MSHA, there are three key questions the regulated community probably has about the agency:

- **How will he handle personnel?** MSHA went on a hiring binge the past few years and promoted younger staff to leadership roles. Those employees remain and are who mine operators most commonly encounter on a day-to-day basis. Will new leadership impact how they do their job?
- **What will be his agenda?** During the previous Trump administration, MSHA did not pursue a robust regulatory agenda but instead focused on reforms to how the agency functions. During those years, mine operators saw a "blurring of the lines" between coal and metal/non-metal, an effort aimed to make the agency more efficient. But we expect Palmer's MSHA to attempt to pursue a deregulatory agenda, as signaled by a July release of a list of several rules slated to be modified or eliminated. Look for attempts to scrap outdated or unnecessary standards and to curtail the authority of District Managers in plan approval. (NOTE: MSHA cannot simply repeal standards or make existing standards less stringent like other agencies. Under Section 101(a)(9) of the Mine Act, MSHA may not enact any new rule that lessens safety relative to an existing standard. Any rulemaking conducted with an eye toward regulatory reform must take this requirement into account).
- **What will happen with the Silica Rule?** The signature piece of rulemaking put forth during the Biden administration – the proposed silica rule – is currently stayed by the 8th US Circuit Court of Appeals. It is uncertain when or how the current challenge to the rule will be resolved but it is not expected that MSHA will defend the rule robustly. That said, we do expect organized labor to challenge any attempts to modify or rescind the current rule.

Conclusion

If you have any questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our Workplace Safety or Mine Safety and Health team. We'll continue to monitor these developments and provide timely updates as they occur, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information directly to your inbox.

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