



New Year Brings MSHA Focus on Contractor Safety and Compliance

Insights

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During the final months of 2019, the Mine Safety and Health Administration (“MSHA”) advised the mining community that it would pay attention to issues involving contractors working at mine sites, noting a disproportionate number of accidents involving contractor employees. According to information distributed by MSHA, 48% of mining fatalities in 2019 involved employees of contractors even though contractors made up only 25% of the mining workforce. As the New Year begins, MSHA has unveiled an initiative aimed at contractor safety and compliance. That initiative has consequences for both mine operators and contractors.

Under MSHA’s recently announced Contractor Training Assistance Initiative, mine inspectors and personnel from MSHA’s Educational Field and Small Mine Services (EFSMS) will visit mines where contractors are likely to be present to address “the effectiveness of contractors’ training programs and the safety of contractors.” Once at the mine, MSHA personnel will determine the experience level of contractor employees and whether they should have received New Miner, Experienced Miner, Hazard and/or Task Training. The MSHA personnel will then observe the contractor employees performing their job duties, discuss with them the training they received and evaluate its effectiveness.

Although billed as a compliance assistance program, the presence of inspectors in addition to EFSMS personnel indicates that enforcement action may be taken at these site visits. While EFSMS personnel do not have the authority to issue citations and orders, inspectors do. Given that the focus of the initiative is training, it should be noted that under Section 104(g) of the Mine Act, 30 U.S.C. § 814(g), an inspector may issue an order withdrawing a miner from a task if he or she deems the miner to be insufficiently trained. MSHA has advised that under its initiative, it will invite a representative of the mine operator to accompany its personnel while they are on site, as it must for any inspection activity. Mine operators are strongly encouraged to avail themselves of this opportunity and accompany MSHA personnel anywhere they go on mine property.

Separate from its site visits, MSHA is encouraging mine operators to engage with contractors working at their sites about safety issues in their work areas and to take an active role in ensuring that all contractor employees are properly trained. MSHA is also reminding mine operators that they, as well as the independent contractors, are responsible for contractors’ compliance with safety and health standards and regulations. Indeed, in Speed Mining, Inc. v. FMSHRC, 528 F.3rd 310 (4th

Cir. 2008) and Secretary of Labor v. Twentymile Coal Co., 456 F.3rd 151(D.C. Cir. 2006), two Circuit Courts of Appeal held that MSHA may cite the mine operator, the independent contractor, or both for any violations committed by a contractor or its employees. It is at MSHA's discretion how such enforcement action is taken.

Going forward, both mine operators and independent contractors should take heed of MSHA's increased focus on contractors working at mine sites. Mine operators should take every effort to ensure that the contractors they engage are complying with applicable all applicable MSHA safety and health requirements, particularly those involving training. They should take care to monitor MSHA activity on their sites and recognize that they may be liable for violations committed by their contractors. Contractors, who are also considered to be "operators" under the Mine Act, may also be cited for violations. They too should redouble their efforts to ensure that their employees are properly trained, given that they may very well be under the microscope in the new year.

Related People



Arthur M. Wolfson
Partner
412.822.6625
Email

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