



Candid Observations from M. Patricia Smith, Solicitor of Labor, US DOL

Insights

3.09.16

Solicitor Smith did not announce any positions that we have not discussed, but she confirmed our opinions on the Administration's priorities and their intentions as they energetically finish their term.

Even though I expected it, I was sobered by the repeated emphasis on a wide variety of efforts to expand and vigorously whistleblower rights. I cannot agree with the Administration's belief that retaliation is so rampant that so much of the DOL's limited resources should be so invested.

- The Solicitor repeatedly described the Administration's intent to obtain and promote **"the Workers' Voice,"** which was interpreted quite broadly, especially with regard to whistleblowers.
- The Solicitor discussed the action against a major manufacturer challenging their **rule requiring immediate report of injuries,** and not surprisingly, management attorneys expressed concern. This case is especially noteworthy because it represents an expansion into other industries from the rail sector, where the Administration has filed many such actions.

We write about the Administration's focus on expanding legal requirements through interpretations, directives and cases, and Solicitor Smith acknowledged, for example, that her office evaluates cases that *"clarify or expand obligations."*

- Solicitor acknowledged that many businesses are uncomfortable with the Administration's **"Sub Regulatory Guidance."**
- Solicitor Smith praised workplace violence cases, and the Administration's interest in cases under the 5(a)(1) General Duty provisions was later referenced by Tom Galassi, Director, OSHA Directorate of Enforcement, when he explained the Weighted Inspection process emphasis on **"Novel Cases,"** including:
 - Ergonomics
 - Heat stress
 - Non PEL Overexposure
 - Workplace Violence

Solicitor Smith expressed a commitment to focusing on enterprise enforcement and even seeking broader remedies and damages. I was pleased that Solicitor emphasis the Hannaford corporate

Ergonomic Settlement because employers need to recognize their exposure to corporate wide focus, including on ergonomic conditions.

- Thomas Galassi, Director, OSHA Directorate of Enforcement, also talked at length about Dollar Tree and other **Corporate wide focus and Settlements.**
- Employers are facing as much as 82% increase in penalties come August 1, 2016, and they need to consider the implications for organizations with

Solicitor Smith also emphasized an Administration theme about **the “Fissured Workplace,”** and recommended a book by MIT Professor Tom, *The Good Job Strategy*. I’ll read it.

Solicitor Smith’s comments were interesting and honest. Good session.

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