



What's the Real Effect of OSHA's Revamped Inspection Process, the "Enforcement Weighing System?"

Insights

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On October 1, OSHA started its "Enforcement Weighing System," which means that OSHA Compliance Officers and Area Offices will be under less pressure to complete a number of inspections and will receive credit for separate "enforcement units" within an individual inspection. This means that potentially OSHA will conduct fewer inspections and/or routine/straightforward inspections will receive less time and scrutiny. Dr. Michaels explained that Industrial Hygienists can conduct much thorough investigations and OSHA can focus on OSHA's evolving priorities. To me, the main message from this change is that OSHA is serious about emphasizing general duty areas with no vertical standard, especially ergonomics and workplace violence. OSHA has already publicized its enforcement emphasis on acute care hospitals and ergonomic and workplace violence challenges. This follows a serious and escalating ergonomic emphasis on distribution and especially the beverage distribution setting. Likewise, OSHA has publically expressed its intent to increase Industrial Hygiene inspections, along with increased Process Safety Management (PSM) inspections, which it has done.

From Dr. Michael's Press Release:

Routine inspections count as one unit, while those requiring greater resources — such as those involving musculoskeletal disorders, chemical exposures, workplace violence, and process safety management violations — count as up to nine units. The values are based on historical data and will be monitored and adjusted as necessary.

As I have regularly explained, this OSHA leadership has been methodical, adopted a longer term strategy, and coordinated and built on outwardly separate initiatives. Consider the interrelationship of the following initiatives:

- The new January 2015 requirement that employers report individual amputations and employee hospitalizations and the triaged inspection response efforts which has exposed OSHA to thousands of worksites it has not previously visited.
- Updated the "Amputation" National Emphasis Program (NEP) requiring intense investigation of guarding, lockout, training, and electrical issues which has led to many of the most complex

inspections and the highest penalties. These inspections can be triggered by the new amputation reporting requirements.

- OSHA's Temporary Employee Initiative and now its cooperation with the NLRB in the NLRB's "joint employer" enforcement effort.
- OSHA's ongoing efforts to publicize OSHA violations and make available individual employer information.
- OSHA's six year effort to shift OSHA's assets to Whistleblower Enforcement and promoting and encouraging complaints.
- OSHA's 2015 Hospital Ergonomic and Workplace Violence campaign.
- OSHA's various Ergonomic efforts by which the Agency is building certain Industries' "recognition" of ergonomic hazards and abatement methods developed by NIOSH, OSHA and unions and third parties;
- The new so called "Blacklist Executive Order" that requires an evaluation of government contractors' OSHA citations, NLRB unfair labor practices, wage-hour and EEO claims.
- A new education effort in which OSHA is educating US Attorneys, State Attorney Generals, and even DAs about how to use federal AND state criminal actions against CEOs and executives.

Give the US DOL credit; they are bit by bit leveraging these various efforts to create new employer requirements and increase employers' civil and criminal exposure. Secretary Perez has been the most energetic and forceful Secretary of Labor that I've encountered in my 31 years of practice. And while the cumulative effects have been gradual, we are beginning to see success.

The immediate relevance of this ongoing effort is that you are more at risk for hard OSHA inspections if you are in healthcare, oil and chemicals, manufacturing, and distribution and logistics. If you are unionized or involved in a union organizing campaign, you are at risk of the union triggering these new more complex inspections. Disgruntled employees now pose more risk of claims and inspections and before multiple agencies. Please don't treat these developments as just a PR effort. Evaluate your processes for managing governmental complaints and inspections. Recognize that maintaining employee safety does not guarantee compliance with OSHA regulations. Get serious about developing an effective safety culture. And review your handbooks based on the NLRB's new attacks, and your exemptions based on the proposed new Wage-Hour exemption salary test.

UPDATE 10/3 - The Oregon shooting tragedy will further fuel the focus on Workplace Violence. We'll discuss Workplace Violence, Ergonomics and Industrial Hygiene focus in coming posts.

GIVE TO HELP OREGON SHOOTER SURVIVORS AND THEIR FAMILIES! [United Way](#), [Umpqua Bank](#) establish relief fund for those impacted by UCC tragedy

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