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Feature: 'There Is a New Sheriff in Town': What Employers Need to Know About OSHA Compliance Today

'There Is a New Sheriff in Town': What Employers Need to Know About OSHA Compliance Today

The officials responsible for federal programs aimed at worker safety and health emphatically reject what they perceive as the failure of the Bush administration to protect employees. Here is an outline of the enforcement's emphasis, and steps employers can take for their own protection and compliance.

By **Peter R. Spanos**

There is a new sheriff in town. ... Make no mistake about it, the Department of Labor is back in the enforcement business. We are serious, very serious." With these words, Secretary of Labor Hilda Solis declared the intent of the Obama administration to intensify enforcement of the Occupational Safety and Health Act.

This statement by Solis has been closely echoed by two other top officials of the Department of Labor. At congressional hearings, Jordan Barab, acting head of the Occupational Safety and Health Administration, assured workers, saying: "You are not alone. We have your back and your fight is our fight. ... There's a new sheriff in town."

Assistant Secretary of Labor David Michaels has vowed that "under this administration, OSHA is returning to the original intent of the OSH Act. We're a regulatory and enforcement agency and we're going to act like it. ... Make no mistake. In addition to sending a message to these companies that we will not tolerate neglect of worker safety and health ... OSHA will react swiftly and strongly when workers are put at risk."

The officials responsible for federal programs aimed at worker safety and health emphatically reject what they perceive as the failure of the Bush administration to protect employees. For example, Barab, the acting head of OSHA, instructed staff to suspend the voluntary, cooperative safety promotion programs with employers that were launched under the Bush administration to free up resources for strict inspection and enforcement. The recent actions taken to step up OSHA enforcement include:

- Launching a Severe Violators Inspection Program to specifically target and "deliver a message" to large employers that are perceived as neglecting worker safety or having poor safety records.
- Introducing into Congress the Protecting America's Workers Act, which if passed would increase fines on companies that violate safety laws, impose expanded criminal felony penalties and give injured workers and their families the right to participate in the OSHA penalty assessment process.
- Introducing another bill to require large employers or those with multiple sites to report every workplace illness, injury or fatality, not just serious injuries or death, as under current regulations.

- Use of OSHA inspection “SWAT” teams to “react swiftly to troubling trends,” such as a construction industry sweep in Texas that resulted in 900 inspections, 1,500 citations and \$2 million in penalties.
- Working closely with the Department of Justice to increase the number of criminal prosecutions for workplace fatalities.
- Commencing [National Emphasis Programs](#) with development of enhanced regulations and inspections addressed to specific industries or hazards, including refineries, chemical plants and combustible dust as well as record keeping.
- Hiring more than 130 new inspectors and raising the OSHA annual operating budget by \$41.6 million in 2010, allocated solely to increased enforcement, plus an additional \$14 million requested for 2011.
- Implementing new online search technology that allows public access to information about OSHA citations 24 hours a day, seven days per week.
- Stepping up the frequency of inspections of federally funded construction projects using funds allocated by the economic stimulus legislation enacted in 2009.

All employers will be affected by the new National Emphasis Program directed to illness and injury record keeping. Current OSHA officials are skeptical about the accuracy of the data regarding workplace accidents and illnesses kept by employers in all industries. OSHA believes that the actual rates of accidents and sicknesses are greater than many companies report.

To bring about better reporting of workplace injury and sickness, OSHA started a test National Emphasis Program of systematic record-keeping inspections that runs through September 2010. The experience with that test program will be used to design procedures for inspecting all employers for accuracy and promptness in keeping occupational accident and injury records, including employee interviews designed to find out whether injury or sickness reporting has been suppressed.

Another change that affects many employers is the new “open access” [Web site](#) under development by the Occupational Safety and Health Review Commission. The commission is a quasi-judicial independent federal agency that presides over contests of OSHA inspection citations or penalties. The Web site has information on the agency’s monthly case docket, a chart of case activity and copies of notices issued in cases. The agency has also [posted a link](#) to its administrative law judge decisions that are pending review by the commission. This new public access will allow a company’s employees, unions, competitors and customers to readily access information about contested OSHA cases in which the company is involved. The threat of such access may deter some companies from contesting OSHA citations, leading to more settlements and fewer challenges to OSHA citations.

A large number of OSHA standards or potential new standards are under consideration and development. These include regulations in the areas of musculoskeletal stress and injury, personal protective equipment, combustible dust and dust exposure, respiratory protection, solar and wind technology, construction hazards such as fall protection and electrocution, chemical hazards and blood-borne infection. In addition, Department Labor officials such as Barab have stated that the process of considering and adopting new standards is too slow, and declared the pace of issuing and revising standards will increase.

In addition to specific standards, OSHA has expanded its use of the “general duty clause,” the non-specific regulation that requires employers to maintain workplaces free from “recognized hazards” that may cause serious injury or death. OSHA is attempting to use the general duty clause to fill in gaps in existing standards and to sidestep the lengthy process of issuing specific safety and health standards.

Employers have seen and will continue to experience increased inspection activity, particularly the employers falling within the “top 4,500” most dangerous workplaces that OSHA has announced will receive frequent, unannounced inspections.

In light of this increased enforcement activity, employers should improve their efforts to ensure they are in compliance with OSHA standards before they are inspected. Internal and outside audits of OSHA compliance can measure current performance and ensure future compliance. Management commitment to OSHA compliance, an effective and up-to-date safety and health program, employee training, and ensuring that proper equipment is being provided and maintained are critical in this increased enforcement environment.

Employers should not only look to existing OSHA standards, but also consider industry standards and injury trends. Prudent management includes increasing vigilance to achieve current compliance and may require increased efforts to create an effective safety and health program that can withstand OSHA’s enforcement push. Finally, employers should consider training facility management in how to effectively handle an OSHA inspection.

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