Safety & Workers' Compensation Committee Agenda

October 15, 2025

Welcome & Introductions	**Matt Shurte**, General Counsel, Lancaster Colony Corporation
Public Policy Report	**James Lee**, OMA Staff
Counsel's Report	**Bill Creedon**, Counsel, Bricker Graydon LLP
Guest Presenter	**Ana Cammarata**, Consultant, Ohio Bureau of Workers' Compensation
Guest Presenter	**Nick Scala**, Chair and Partner, Conn Maciel Carey LLP

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2026 Safety & Workers' Compensation Committee Calendar Coming Soon!

OMA Safety and Workers' Comp Committee - Oct 2025

Name	Company	Location
Ryan R. Augsburger	The Ohio Manufacturers' Association	Columbus, OH
Mary Ann Billet	Brilex Tech Services	Youngstown, OH
Michelle Borchelt	G & S Bar and Wire LLC	Wooster, OH
Lisa A. Briem	American Trim Sidney	Sidney, OH
Karen Brigner	The Ohio Manufacturers' Association	Columbus, OH
Angie Brunswick	Fort Recovery Industries, Inc.	Fort Recovery, OH
Corrine Carman	Reidenbach Law Group, LLC	Dublin, OH
Ashley Chojnacki	WillowWood Global LLC	Mount Sterling, OH
William Creedon, Esq.	Bricker Graydon LLP	Columbus, OH
Hazel Davis	Cirba Solutions	Lancaster, OH
Ryan Dominak	ELMET Technologies	Euclid, OH
Paul G. Dunlavey	P.V.P. Industries, Inc.	North Bloomfield, OH
Joseph F. Dutt	Summitville A Brand of General Shale Brick	Minerva, OH
Blaize Fields	APO Pumps & Compressors	Hilliard, OH
Jacqueline Filipovich	B & B Molded Products	Defiance, OH
Mardi Fraley	Mid West Fabricating Company	Amanda, OH
Danielle Fulton	Millat Industries	Kettering, OH
Rhealyn N. Gelin	Illuminate USA LLC	Westerville, OH
Jennifer Gilliland	Identity Systems Inc	Columbus, OH
Jan Gillis	McGregor Metal Leffel Works LLC	Springfield, OH
Jan Gillis	McGregor Companies Administrative, LLC	Springfield, OH
Cedric Glasper	Mechanical Rubber	Strongsville, OH
Heather Glenn	E P C - Columbia LLC	West Des Moines, IA
Marie Gribble	Haviland Drainage Products	Haviland, OH
Susan Grom	American Honda Motor Company	Marysville, OH
Michael Hackett	Morrison Products Inc.	Cleveland, OH
Linda Howman	Knott Brake Company	Lodi, OH
Matthew F. Johnston	Worthington Enterprises	Columbus, OH
Angela Keenan	Ideal Electric and Manufacturing Company	Mansfield, OH
Renee Kohr	Remuriate Delta LLC	LaSalle, IL
Shauna Kreger	Belden Brick Company	Canton, OH
Bryan Kresak	Illuminate USA	Pataskala, OH
James Lee	The Ohio Manufacturers' Association	Columbus, OH
Amanda K. Leon	International Motors, LLC	Springfield, OH
Jeff Martin	PSC Crane & Rigging	Piqua, OH
Brian Mayle	Brechbuhler Scales Inc.	Canton, OH
Nathan Mays	The Ohio Manufacturers' Association	Columbus, OH
Chelsea McClain	TS Tech Indiana, LLC.	New Castle, IN
Michael McCormick, CSP	Applied Specialties Innovations, LLC A Tidal Vision Company	Avon Lake, OH
Regan McHale	Eagle Elastomer Inc	Cuyahoga Falls, OH
Meghann Metz	Bully Tools, Inc.	Steubenville, OH
Matt Mohler	Delta Systems	Streetsboro, OH
Peggy Mullins	National Machine Co. dba NMG Aerospace	Stow, OH
Crystal Myers	The Ohio Manufacturers' Association	Columbus, OH
Patricia Myers	Hynes Industries, Inc.	Youngstown, OH
David Scott Neighbor	Wiley Companies	Coshocton, OH
Tom R. Nelson	Yoder Lumber Company, Inc.	Millersburg, OH
Ken Nielsen	Cincinnati Incorporated	Harrison, OH
Michael Oconnor	Smithers-Oasis Company	Kent, OH
David O'Neil	The Ohio Manufacturers' Association	Columbus, OH
Melanie Pillion	Francis Manufacturing Company	Russia, OH
Kristin Pitarra	Certech, Inc.	Twinsburg, OH
Heather Pittman	Wright Tool Company - Barberton, OH	Barberton, OH
Linda Pocock	International Metal Hose Company	Bellevue, OH
Kelly Powers	ScottsMiracle-Gro Company	Marysville, OH
Robert Ricker	G V S Filtration	Findlay, OH
Rene Rimelspach	American Honda Motor Co. Inc.	Marysville, OH
Sue A. Roudebush	Taft Stettinius & Hollister LLP	Columbus, OH

OMA Safety and Workers' Comp Committee - Oct 2025

Name	Company	Location
Dennis Rowbotham	GRT Utilicorp, Inc.	Wooster, OH
Lynn Sammon	Mechanical Rubber	Warwick, NY
Erin Sargent	General Films, Inc. - Covington, OH	Covington, OH
Nicholas Scala	Conn Maciel Carey	
Greg Seibert	Elite Biomedical Solutions, LLC	Cincinnati, OH
Matthew Shurte	The Marzetti Company	Westerville, OH
Christopher N. Slagle	Bricker Graydon LLP	Columbus, OH
Brittany Smith	The French Oil Mill Machinery Company	Piqua, OH
Douglas E. Spiker	Roetzel & Andress	Cleveland, OH
Julie Tapp	Pyrotek, Inc.	Aurora, OH
Jessica Toy	Mar-Bal, Inc.	Chagrin Falls, OH
Kendy A. Troiano	Clark Grave Vault Company	Columbus, OH
Landon Trout	APO Pumps & Compressors	Hilliard, OH
Megan E. Troyer	Working Partners	Millersburg, OH
Stella Tsirelis	Massillon Container Co	Navarre, OH
Juliet Walker	The Ohio Manufacturers' Association	Columbus, OH
Christopher Ward	Calfee, Halter & Griswold LLP	Columbus, OH
Jameson Warren	White Castle System, Inc.	Columbus, OH
Hana Wengerd	Prospira America Corporation	Upper Sandusky, OH
Jennifer Werden	General Die Casters Inc.	Twinsburg, OH
Debbie White	Stellantis	Auburn Hills, MI
Christine Young	Iten Industries, Inc.	Ashtabula, OH
Teresa Young	White Castle System, Inc.	Columbus, OH

Total Participants 81

Ana Cammarata

Bilingual Business Consultant

Ana Cammarata has been with the Ohio Bureau of Workers' Compensation for 21 years. With 10 years as an Employer Services Specialist and 11 years as a Safety Consultant, she brings a wealth of knowledge and experience to her new position as a Bilingual Business Consultant.

Ana works with Latino/Hispanic business communities, helping them navigate the Ohio workers' compensation system and identify opportunities to decrease costs. She assists employers in South Central Ohio with the potential financial benefits of proven risk management strategies and various cost-control programs. Additionally, she partners with local business associations, chambers of commerce, and safety councils to bring industry feedback to BWC executive management and educate the employer community regarding workers' compensation topics.

Ana holds a Bachelor of Science degree in Chemistry and a master's in business administration, and she is a Certified Safety Professional (CSP). She is fluent in Spanish and lives in Lakewood, Ohio, with her husband, Anthony.

You can reach Ana at (216) 318.9178 or Ana.C.12@bwc.ohio.gov.

CONN
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Nicholas W. Scala

Chair, MSHA • Workplace Safety Practice Group
Partner, OSHA • Workplace Safety Practice Group
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Biography

Nicholas W. Scala is a chair of the firm's national MSHA • Workplace Safety Practice Group. His practice focuses on issues involving mining safety and health law. Nicholas represents coal and metal/non-metal mining operators, with operations on both the surface and underground, in addition to cement manufacturers and independent contractors. His clients' operations extract a wide range of industrial minerals, including coal, aggregates, construction sand and gravel, dimensional stone, gypsum, iron ore, limestone, and silica and frac sands.

Nicholas represents and advises clients in all phases of involvement with the Mine Safety and Health Administration (MSHA), particularly companies challenging enforcement by the agency. Nicholas also represents clients in litigation against the Occupational Safety and Health Administration (OSHA) as well as developing corporate safety and health policies for clients in the construction and mining industries. As a Certified Mine Safety professional through the Society for Mining, Metallurgy & Exploration's International Academy of Mine Safety & Health, his experience includes:

- Advising and representing clients in relation to inspections, accident and fatality investigations, and enforcement actions involving MSHA, OSHA, and state and local regulators
- Defending operators and contractors during the full range of litigation against MSHA, including informal and formal contest of citations or orders, negotiations of settlements to minimize the impact of future enforcement actions at the mine and on wrongful death and personal injury civil cases, and trials before the Federal Mine Safety and Health Review Commission
- Representing employers and managing investigations resulting from complaints under Sections 105(c) and 110 of the Mine Act
- Advising clients with regards to MSHA/OSHA jurisdiction concerns through review of the MSHA/OSHA Interagency Agreement and contest of jurisdiction disputes
- Developing and auditing safety programs and policies, including on-site facility inspections; and
- Providing nationwide workplace safety training and compliance counseling for employers, state-grant programs, and trade associations

Prior to joining Conn Maciel Carey, Nicholas was an attorney in a national MSHA practice group in the DC area. He also worked in-house for a national retailer on intellectual property portfolio management and corporate compliance. Before attending law school, Nicholas worked in the mining and heavy-highway construction industry.

Nicholas frequently speaks on MSHA and related legal issues such as Supervisory Rights & Responsibilities, Contractor Safety and MSHA Enforcement Initiatives & Guidance at mine safety and health events around the country. He is a published author on a variety of safety and health topics. He has been named a "Rising Star" by Washington, DC Super Lawyers in 2017, 2018, and 2019.

TO: **OMA Safety & Workers Compensation Committee**
FROM: **James Lee**
RE: **Safety & Workers' Compensation Public Policy Report**
DATE: **Oct. 15, 2025**

Overview

As the General Assembly has worked through its new session, state lawmakers are prioritizing two key issues in the areas of safety and workers' compensation: marijuana and synthetic hemp reforms.

After early signs of hope that years of political gridlock blocking major reforms to Issue 2 marijuana laws might finally end, disagreements among lawmakers and stakeholders over how to regulate marijuana and synthetic hemp products like delta-8 THC continued to derail progress. Frustrated by the legislature's inaction on synthetic hemp, Governor DeWine issued an executive order temporarily halting the sale of the product, pressuring lawmakers to find a solution.

Workers' Compensation and Industrial Commission budgets were passed at the end of the summer with no major policy changes.

On the federal side, the OMA is monitoring potential changes to OSHA regulations finalized under the Biden administration, as new policy directives from the Trump administration are likely to come with last week's Senate Confirmation of David Keeling to lead the department.

Further BWC Rate Reduction Effective July

Earlier this year, the Ohio Bureau of Workers' Compensation (BWC) announced a 6% reduction in private employer premiums, set to take effect on July 1, 2025, saving businesses nearly $60 million. This follows a 7% reduction last year and marks the 16th rate cut in 17 years.

Governor Mike DeWine and BWC leadership attribute the decrease to improved workplace safety and employer participation in safety programs. Strong investment performance has also been a factor enabling continued rate reduction. The actual premium change for businesses will vary based on factors such as industry classification, payroll, and claims history.

A recent study commissioned by Oregon places Ohio premiums among the lowest five nationally.

Safety & Workers' Compensation Legislation and Rules

House Bill 81: Workers Compensation Budget

In late June, the legislature passed House Bill 81, providing two-year operating funds for the agency. BWC's total request for the biennium is $754.9 million, a slight 2.73% decrease from the bureau's last budget request.

The BWC budget does not contain significant changes to policy, however, the *Dillon* decision reducing overpayments will likely be targeted as a need for legislative amendments benefiting claimants' lawyers at the expense of employers. The OMA will monitor and defend against any last-minute attempts to push for policy changes in the workers' compensation space.

House Bill 80: Industrial Commission Budget and Proposed Ombuds Office Rename

As expected, the Commission's requested budget, House Bill 80, included no major policy changes nor big increases in appropriation. The IC Budget Bill, HB 80, was passed in late June.

One minor but notable change surrounds a provision in the House version to change the name of the "workers' compensation ombudsperson system" to the "Workers' Compensation Customer Advocacy Office," prompting some criticism that the change would create confusion and shift the branding of the office away from that of a neutral administrator, toward a brand that sounds closer to a consumer advocate organization.

Senate Bill 241: Penalties for Public Employers Challenging Claims

Introduced July 30, 2025, S.B. 241 would amend R.C. 4123.512 to impose a $50,000 penalty on any employer that loses an appeal of a workers' compensation award related to firefighter cancer claims under R.C. 4123.68(X), with the penalty paid directly to the claimant. The bill is pending before the Senate Financial Institutions, Insurance and Technology Committee. The OMA is concerned that this measure sets a troubling precedent by penalizing employers for exercising their right to appeal, potentially exposing private employers to similar risks in the future and disrupting the balance of Ohio's workers' compensation system.

Senate Bill 56 & House Bill 160: Recreational Marijuana Reforms

Political gridlock continues to stifle reforms to Ohio's medical marijuana laws nearly two years after the passage of the issue 2 ballot initiative that legalized adult-use cannabis. Many were hoping Senate Bill 56 would move quickly in the legislature's attempts to address provisions to lower THC potency limits, restrict home cultivation, ban sharing, and eliminate the voter-approved social equity program, as well as implementing stricter transport regulations, advertising restrictions, and employment-related penalties for cannabis users. Unfortunately, the bill has come to a screeching halt with numerous stakeholders failing to come to an agreement.

While the OMA opposes cannabis legalization due to workplace safety concerns, the Issue 2 statute includes strong protections for employers maintaining drug-free workplace policies. The OMA is working with lawmakers to ensure these provisions remain intact as reform bills move through the committee process.

Senate Bill 86: Legislation to Regulate Delta 8 – Synthetic Marijuana

Governor DeWine and members of the Senate have voiced their intent to place restrictions on delta-8 THC, a milder form of the psychoactive compound in cannabis. The substance is facing a potential ban in Ohio as Governor Mike DeWine raises concerns about its under-regulation and accessibility to minors. SB 86, proposed by Senator Steve Huffman, was chosen as the primary vehicle for these reforms, which has unfortunately faced the same political gridlock as the marijuana reform attempts.

The bill, if passed, would be particularly impactful to manufacturers, as proposed regulations will likely restrict access for workers under the age of 21 and outlaw packaging that would allow employees to secretly use the product on the job.

Out of frustration for legislative inaction, Gov. DeWine issued an emergency executive order requiring Ohio retailers to remove intoxicating hemp products from shelves by October 14, citing youth safety and public health concerns. The order, effective for at least 90 days, empowers state and local officials to seize noncompliant products and fine violators $500 per day. DeWine also directed the Ohio Department of Agriculture to revise rules clarifying that intoxicating hemp is not legally considered "hemp" or a "hemp product."

The action drew bipartisan attention: House Speaker Matt Huffman (R-Lima) said lawmakers could craft a legislative fix within 60–90 days, while Rep. Dani Isaacsohn (D-Cincinnati) questioned whether executive action was appropriate. Critics, including Rep. Tex Fischer (R-Youngstown) and American Republic Policy, argued the order is overly broad and harmful to retailers and producers of the product.

The Ohio Manufacturers' Association supported the move out of concerns for workplace safety. The OMA issued a statement supporting the governor, which can be found in today's materials.

Legal Challenge Questions Qualifications of Ohio Workers' Compensation Board

A legal challenge filed on March 17, 2025, claims that none of the three Ohio Industrial Commission members meet the state's requirement of six years of workers' compensation expertise. Suzanne Duke, a worker denied benefits, is seeking an injunction to halt hearings until a judge reviews their qualifications. The commissioners, appointed by Governor Mike DeWine and confirmed by the Senate, have backgrounds in law, business, and public service, but their direct workers' compensation experience is unclear. The governor's office and state officials maintain that the appointees are qualified, while the court will determine whether they can continue their roles.

Employers Receive Win in AutoZone Decision Impacting TTD

On Nov. 26, 2024, the Ohio Supreme Court issued a ruling that benefits manufacturers by clarifying workers' compensation rules. The court determined that an injured worker who is fired for reasons unrelated to their injury is not eligible for temporary total disability (TTD) benefits. Under this ruling, in a case where an injured worker is unable to return to their job due to a work-related injury but is terminated for reasons unrelated to the injury, they can no longer claim TTD benefits. The court's decision ensures that workers can only receive compensation if their job loss is directly tied to the injury.

This ruling is a win for Ohio manufacturers, helping to limit unnecessary workers' compensation costs when the job loss is not injury-related.

Dillon Supreme Court Case to Save Employers on TTD Overpayment

The *Dillon* decision by the Ohio Supreme Court fundamentally alters the termination date for Temporary Total Disability (TTD) benefits, impacting employers significantly. Previously, TTD benefits could be terminated at the date of the Industrial Commission hearing officer's decision, causing potential overpayments. However, with *Dillon*, benefits can now be terminated on the date of Maximum Medical Improvement (MMI) as determined by any physician, including those hired by the employer, leading to an earlier termination of benefits. This change is anticipated to result in a surge of overpayments declared in Ohio, affecting employers' bottom lines.

The decision's longevity is uncertain, as it may face potential changes in the legislature. To mitigate overpayments, the Industrial Commission could expedite motions for benefit termination, potentially reducing costs for employers. Overall, *Dillon* promises to reduce claim costs and alleviate financial burdens on employers in Ohio. The OMA submitted a joint letter defending a recent ruling to the Industrial Commission, which can be found in today's materials.

Senate Confirms Trump Appointee David Keeling to Lead OSHA: Key Impacts for Employers

In October, the Senate finally confirmed Trump's OSHA Director appointee, David Keeling. Keeling is expected to roll back Biden-era policies, including electronic injury reporting, public data releases, and the union walkaround rule. His tenure may also halt heat illness regulations,

reduce OSHA inspections, and deprioritize infectious disease standards. Employers should prepare for shifts in enforcement priorities and increasing state-level safety regulations.

Site Specific Targeting Takes Effect

OSHA's updated Site-Specific Targeting (SST) inspection program took effect on May 20, which focuses on non-construction workplaces with 20 or more employees. The new program identifies establishments for inspection based on:

- High Days Away, Restricted, or Transferred (DART) rates in 2023
- Upward-trending DART rates significantly above the 2022 private sector average
- Exceptionally low DART rates to verify data accuracy
- Failure to submit 2023 Form 300A data

The program sets separate DART thresholds for manufacturing and non-manufacturing sectors. This initiative aims to direct enforcement resources to workplaces with elevated injury and illness rates, ensuring safer work environments.

See the article from OMA Connections Partner Fisher Phillips for more information.

OSHA Heat Rule Faces Potential Removal Under Trump

Last year, OSHA recently unveiled its first-ever national heat safety rule aimed at reducing heat-related illnesses by requiring employers to implement comprehensive safety measures. This rule will impact manufacturers and employers by necessitating changes to workplace safety protocols, including regular heat risk assessments, hydration, and rest breaks. The rule also introduces new responsibilities such as training, acclimatization programs, and emergency planning, which could increase operational costs and necessitate updates to existing safety procedures.

The rule is likely to be reconsidered under the Trump administration and unlikely to reach finalization.

OSHA Walkaround Rule

Last year, Federal regulators finalized a proposed rule to give designated union representatives, or virtually any non-expert third party individual, the right to accompany OSHA inspectors during facility "walkarounds" or inspections — regardless of whether the representative is an employee of the facility. The rule took effect on May 31, 2024. In May, the National Association of Manufacturers (NAM) joined a coalition of national business associations challenging the rule.

The OMA made public comments to OSHA opposing the rule on the grounds that allowing virtually anyone to join an OSHA inspection process transforms a safety-focused endeavor into a tool for union organizing, a tactic for attorneys in litigation, a threat to trade secrets, and a means to harass employers.

You can find the OMA's comments in today's meeting materials. In follow-up advocacy efforts, the OMA sent a letter to Ohio's congressional delegation with nearly 200 of our member companies signing on to urge legislative action against the rule. That letter can also be found in today's meeting materials.

This rule is likely to be reconsidered by the Trump administration.

OSHA Electronic Record Keeping Expansion

Last year, The U.S. Department of Labor finalized and implemented its rule requiring establishments with 100 or more employees in manufacturing and other industries to electronically submit information once a year to OSHA from their Form 300 – Log of Work- Related Injuries and Illnesses and Form 301 – Injury and Illness Incident Report.

The rule has been criticized by employers for implementing onerous and invasive public reporting standards that unfairly open certain businesses to undeserved public scrutiny and potential legal liability.

This rule is predicted to soon be scrapped or watered down under the Trump administration.

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
October 15, 2025

HB80 **INDUSTRIAL COMMISSION BUDGET** (STEWART B) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2025, and ending June 30, 2027, and to provide authorization and conditions for the operation of Commission programs.

Current Status: 6/27/2025 - **SIGNED BY GOVERNOR**; eff. immediately

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA136-HB-80

HB81 **BWC BUDGET** (STEWART B) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2025, and ending June 30, 2027, to provide authorization and conditions for the operation of the Bureau's programs, and to make changes to the Workers' Compensation Law.

Current Status: 6/27/2025 - **SIGNED BY GOVERNOR**; eff. immediately

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA136-HB-81

HB160 **REVISE LIQUOR CONTROL, HEMP, MARIJUANA LAWS** (STEWART B) To revise specified provisions of the liquor control, hemp, and adult-use marijuana laws and to levy taxes on marijuana.

Current Status: 5/7/2025 - House Judiciary, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA136-HB-160

HB395 **TRACK JOB INTERVIEW ATTENDANCE** (LORENZ B, GROSS J) To require the Director of Job and Family Services to establish an online process for employers to report individuals who fail to appear for a scheduled job interview.

Current Status: 9/15/2025 - Referred to Committee House Government Oversight

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA136-HB-395

SB56 **LAW CHANGES-MARIJUANA, LIQUOR, HEMP** (HUFFMAN S) To revise specified provisions of the liquor control, hemp, and adult-use marijuana laws and to levy taxes on marijuana.

Current Status: 6/24/2025 - House Judiciary, (Fourth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA136-SB-56

SB86 **REGULATE HEMP, CANNABINOID PRODUCTS** (HUFFMAN S, WILKIN S) To generally prohibit the sale of intoxicating hemp products, except for sales at licensed dispensaries; to regulate drinkable cannabinoid products, and to levy taxes on drinkable cannabinoid products and other intoxicating hemp products that may be sold.

Current Status: 5/7/2025 - Referred to Committee House General Government

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA136-SB-86

Safety & Workers' Compensation News and Analysis

Trump Appointee David Keeling Confirmed to Lead OSHA: Focus on Modernization & Standards

October 10, 2025

The U.S. Senate has confirmed David Keeling as the new assistant secretary of labor for the Occupational Safety and Health Administration (OSHA), a move safety community leaders are applauding. With nearly four decades of experience, Keeling is expected to bring a renewed focus to modernizing regulatory oversight using tools like predictive analytics and informed design.

Manufacturing leaders should pay close attention to his agenda, which includes a strong emphasis on leveraging industrial consensus standards to drive best practices and reduce persistent workplace fatalities. His confirmation comes at a crucial time as OSHA seeks to strengthen enforcement and adapt to evolving workplace hazards.

Read more from Fisher Phillips about what to expect from Keeling here. *10/8/2025*

OMA Applauds Gov. DeWine's Executive Order Halting Sale of Intoxicating Hemp Products

October 10, 2025

Earlier this week, the OMA applauded Gov. Mike DeWine for protecting Ohioans from unregulated, intoxicating hemp products that threaten public health and workplace safety. On Wednesday, DeWine signed an executive order temporarily banning the sale of these products. The ban will begin on Tuesday, Oct. 14 and last for 90 days. "These products have created real challenges for employers seeking to maintain safe, drug-free workplaces. The governor's action reinforces the importance of clear, consistent rules that protect workers and ensure Ohio remains a safe state to do business," OMA President Ryan Augsburger said in a statement.

Intoxicating hemp-derived products, such as edibles, gummies, and other consumables containing delta-8 THC, are primarily sold through vape shops and, to a lesser extent, convenience stores and gas stations. Delta-8 THC produces psychoactive effects similar to those of delta-9 THC found in marijuana. *10/8/2025*

Tesla Lawsuit Underscores Growing Safety Challenges in Robotic Manufacturing

October 3, 2025

A former Tesla robotics technician is suing the company and robot maker Fanuc for $51 million after a robotic arm allegedly struck and knocked him unconscious at Tesla's Fremont facility, HR Dive reports.

The case highlights how the rapid adoption of robotics brings not only productivity gains but also new safety and liability challenges. Even companies on the cutting-edge are being forced to update protocols in real time, underscoring the importance of evolving safeguards as automation becomes more deeply embedded in manufacturing. *10/2/2025*

New U.S. Standard Sets Benchmark for Industrial Robot Safety
September 26, 2025

The Association for Advancing Automation has released the first major update in more than a decade to the American National Standard for Industrial Robots and Robot Systems – Safety Requirements. The revised standard offers clarified safety requirements, guidance for collaborative robots, updated classifications and new cybersecurity provisions, setting a higher safety benchmark for manufacturers and integrators.

A third part, addressing safety for users of robot cells, will be released later this year. *9/25/2025*

Count on the OMA for Safety Learning: Inhalation and Noise Exposure Up Next
September 19, 2025

On Thursday, Oct. 2, the Ohio Manufacturers' Association and Safex will discuss *Protecting Employees from Inhalation Exposures & Noise*, during the OMA's monthly safety webinar series. Learn how and why assessing potential inhalation and noise exposures is critical to protecting workers from chronic illness and long-term health risks.

Manufacturers know firsthand how critical safety is within operations, and the OMA's third-party administrative service is designed exclusively for Ohio's manufacturing community. Two-thirds of eligible member companies trust the OMA with their workers' compensation needs.

Why work with a generic TPA when you can work with the people who know manufacturing best? **Interested in learning more?** Visit the OMA website or get things started by submitting an updated AC-3. For questions, please contact Nate Mays, Director of Member Services.

With enrollment deadlines for group discount programs coming quickly, now is the perfect time to explore how the OMA can improve your workers' compensation experience. *9/17/2025*

September is Emergency Preparedness Month
September 12, 2025

Manufacturers looking to protect themselves from emergency situations may want to review the recent OMA-recorded safety webinar, Emergency Action Plans: Shelter in Place & Evacuations, featuring Ryan Moon of Safex sharing tips for emergency action plans and shelter-in-place evacuations. *9/10/2025*

AI Tools Enhance Workplace Safety and Regulatory Compliance
September 5, 2025

A recent article from the Institute for Supply Management highlights how AI-powered video analytics are increasingly being used by manufacturers to improve workplace safety by

identifying ergonomic risks, monitoring PPE compliance and detecting hidden hazards in real time.

By analyzing day-to-day operations and past incidents, these tools help prevent injuries and reduce workers' compensation costs. AI also supports compliance with complex regulations, enabling companies to navigate both U.S. and international safety and sustainability standards.

Manufacturers can leverage these emerging technologies to proactively address risks, improve productivity and maintain safer, more efficient workplaces. *9/3/2025*

BWC True-Up Deadline Fast Approaching
August 15, 2025

The August 31 deadline for employers to report actual payroll for the preceding policy year is fast approaching!

Employers who fail to submit both payroll and payment by the August 31 deadline will be removed from discount programs and deemed ineligible for the upcoming year. Payroll reporting for the policy year spanning July 1, 2024, to June 30, 2025, can be completed online beginning July 1, 2025.

The BWC has created resources to assist employers in reporting, including how to file a true-up report, what payroll is reportable, and how to report for corporate officers. *8/14/2025*

Ohio Premium Rates Ranked Among Lowest in Nation
July 25, 2025

Ohio's workers compensation rates remain some of the lowest in the country, ranking as the fifth-lowest state as of Jan. 1, 2024, according to a report from the Oregon Department of Consumer and Business Services.

This marks a dramatic reversal from 2008, when Ohio had among the nation's highest rates. The state's premium index fell from 83 cents per $100 of payroll in 2022 to 68 cents in 2024.

Gov. Mike DeWine and BWC Administrator Stephanie McCloud credited the decline to improved workplace safety and the agency's efforts. Private employers will benefit from another 6 percent premium cut effective July 1, saving nearly $60 million statewide. *7/20/2025*

BWC Launches Substance Use Prevention Program
July 18, 2025

The Ohio Bureau of Workers' Compensation (BWC) launched a new voluntary program July 1 aimed at helping employers prevent and respond to substance use disorders in the workplace. The Substance Use Prevention and Recovery (SUPR) Program replaces the Drug-Free Safety Program and consolidates several prior grant initiatives.

Through SUPR, employers can qualify for premium rebates by meeting defined safety and prevention standards, including establishing drug-free workplace policies, providing employee training, and offering substance use assessments and testing. The program also covers reimbursement for related expenses and gives participants free access to the BWC's "Better You, Better Ohio!" wellness program. *7/17/2025*

Ohio BWC Removing Grace Period for Payroll Reporting
July 11, 2025

The Bureau of Workers' Compensation (BWC) is eliminating the grace period for submitting actual payroll.

Employers who fail to submit both payroll and payment by the August 31 deadline will be removed from discount programs and deemed ineligible for the upcoming year. Payroll reporting for the policy year spanning July 1, 2024, to June 30, 2025, can be completed online beginning July 1, 2025.

The BWC has created resources to assist employers in reporting, including how to file a true up report, what payroll is reportable, and how to report for corporate officers. *7/9/2025*

Safety & Workers Comp. Wrap-Up: Legislature Approves Budget for BWC, Industrial Commission; Marijuana Regulations Stall
June 27, 2025

The Ohio House and Senate this week passed House Bills 80 and 81, which set the biennial budgets for the Bureau of Workers' Compensation (BWC) and the Industrial Commission for fiscal years 2026–27.

HB 80 funds upgrades to the Industrial Commission's technology for electronic and remote hearings. HB 81 supports BWC operations, extends prosthetic device coverage, renames the ombudsperson office, and reforms processes for injured incarcerated workers and Professional Employer Organization transitions. The bills now head to Gov. Mike DeWine for his signature.

Meanwhile, Republicans in the Ohio legislature seemed to have reached a compromise on Senate Bill 56, which proposed limits on THC, home grows, and tax allocations following the 2023 legalization vote, but the agreement collapsed hours before the scheduled vote.

The Senate version would redirect all marijuana tax revenue to the state's general fund and impose stricter penalties, including a mandatory jail sentence for sharing, while scaling back home-grow and dispensary counts. In contrast, the House aimed to preserve local revenue shares and oppose harsher penalties.

With more than a dozen last-minute Senate changes, leadership pulled the bill and delayed it until after summer recess. *6/25/2025*

OSHA's Public Hearings on Heat Hazard Rule Underway
June 20, 2025

This week, OSHA began public hearings on its proposed national heat hazard rule, the first federal standard aimed at protecting indoor and outdoor workers from heat-related illness. The rule would trigger protections at 80°F and stronger controls at 90°F, requiring employers to implement heat-risk plans with engineering and administrative measures, hydration, rest, shade, and acclimatization protocols.

The informal hearings, part of OSHA's seven-step rulemaking process, run through July 2 and include testimony from labor advocates supporting the rule and business groups warning that the rule should allow flexibility for regional climates and operational needs.

Absent a federal standard, many states maintain their own heat rules, creating inconsistent protections across jurisdictions. *6/16/2025*

OMA Holds Safety & Workers' Compensation Committee
June 13, 2025

This week, the OMA Safety & Workers' Compensation Committee held its second meeting of the year, covering several updates to proposed OSHA rules, including the new Site-Specific Targeting plan, and Ohio legislation to regulate hemp products.

Committee members also heard presentations from Ohio Bureau of Workers' Compensation Special Investigations Division on curbing fraud, OMA Connections Partner Safex on OSHA's Site-Specific Targeting, and Honda Motor Company on their commitment to road safety in Ohio. *6/12/2025*

June Marks National Safety Month: Resources for Manufacturers
June 13, 2025

June is National Safety Month, a time for manufacturers to reinforce workplace safety and reduce preventable injuries. Sponsored by the National Safety Council (NSC), the campaign highlights weekly themes like roadway safety, risk reduction, and mental health.

The Occupational Safety and Health Administration (OSHA) also urges employers to review safety protocols, conduct hazard assessments, and engage workers in identifying risks. Manufacturers can access free resources, including training guides, posters, and checklists, from both NSC and OSHA. Employers are encouraged to use this month to update safety programs, promote reporting systems, and ensure compliance with OSHA standards. *6/12/2025*

Join Lt. Gov. Tressel and hundreds of your manufacturing workforce peers for a day-long, packed agenda of learning and networking.

On November 6, the **Ohio Manufacturers' Workforce Summit** returns to Columbus with a speaker who needs no introduction.

The Honorable Lieutenant Governor Jim Tressel will deliver an afternoon keynote offering a timely and energizing perspective on the work ahead. Known for his thoughtful leadership and deeply rooted passion for education and workforce, his message is expected to leave attendees both grounded and galvanized. His remarks coincide with the recently announced Ohio's Manufacturing Workforce Blueprint, underscoring the power of statewide alignment and how manufacturers, educators and partners are advancing together.

Register Now!

Interested in **sponsorship opportunities**? Please **contact** Nick Miller for more information.

Download the **OhioMFG Mobile App** to access event information, explore the schedule, and network with your peers.

QUESTIONS? **Email us** or call us (800) 662-4463

Oct. 8, 2025

FOR IMMEDIATE RELEASE

OMA Applauds Gov. DeWine's Action to Protect Ohioans from Intoxicating Hemp Products

COLUMBUS, Ohio – The Ohio Manufacturers' Association (OMA) today applauded Gov. DeWine's action to protect Ohioans from unregulated, intoxicating hemp products that threaten public health and workplace safety.

"Manufacturers across Ohio are deeply concerned about the spread of intoxicating hemp products and their impact on workplace safety," said OMA President Ryan Augsburger. "These products have created real challenges for employers seeking to maintain safe, drug-free workplaces. The governor's action reinforces the importance of clear, consistent rules that protect workers and ensure Ohio remains a safe state to do business.

"Ohio manufacturers are committed to fostering safe, productive environments for their employees and communities," Augsburger said. "By prioritizing public safety and regulatory clarity, Gov. DeWine is helping strengthen the foundation for a safer, more responsible business climate in Ohio."

###

The Ohio Manufacturers' Association is Ohio's largest statewide business association comprised solely of manufacturers. Established in 1910, the OMA's mission is to protect and grow Ohio manufacturing. It represents manufacturers of all sizes in every subsector of the industry. Manufacturing is Ohio's largest economic sector, employing approximately 690,000 Ohioans and contributing more than $133 billion annually to the economy. Visit ohiomfg.com, or follow us on LinkedIn, X, Facebook and YouTube.

Dave O'Neil
Director, Communications and Marketing
(614) 629-6828
doneil@ohiomfg.com

The Ohio Manufacturers' Association

November 19, 2024

The Honorable Shane Wilkin
Chairman
Senate General Government Committee
Ohio Statehouse
1 Capitol Square
Columbus, OH 43215

RE: Senate Bill 326 – Written Proponent Testimony

Dear Chairman Wilkin and Members of the Senate General Government Committee:

The Ohio Manufacturers' Association (OMA) strongly supports Senate Bill 326, which prohibits the sale of intoxicating hemp products in Ohio. This legislation addresses critical concerns for the manufacturing sector, including workplace safety, regulatory clarity, and fair enforcement.

The OMA represents over 1,300 manufacturers, employing hundreds of thousands of Ohioans. Our members are committed to fostering safe, productive, and well-regulated workplaces. SB 326 will help protect Ohio workers, clarify legal obligations, and reinforce the state's reputation as a leader in safe and innovative manufacturing.

Unregulated intoxicating hemp products, such as those containing delta-8 THC, undermine workplace safety and complicate employers' ability to maintain drug-free policies. The bill's clear definitions and prohibition of products with intoxicating THC levels will resolve regulatory ambiguities, providing manufacturers with the certainty needed to enforce compliance and protect workers. Furthermore, the bill's enforcement mechanisms and penalties ensure accountability and deter bad actors from exploiting legal loopholes.

The OMA appreciates the leadership of the bill sponsor on this issue and urges the committee to support this important piece of legislation.

Sincerely,

James Lee
Managing Director, Public Policy Services
Ohio Manufacturers' Association
jlee@ohiomfg.com

October 17, 2023

VIA Electronic Submission (http://www.regulations.gov)

Attn: Mr. Douglas L Parker
Assistant Secretary of Labor for OSHA
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Public Comment – Worker Walkaround Representative Designation Process – Docket No. OSHA–2023–0008 / RIN 1218-AD45

The Ohio Manufacturers' Association (OMA) is providing the Department of Labor's Occupational Safety and Health Administration (OSHA) with written comments on RIN 1218-AD45, the agency's proposed rulemaking that seeks to redefine the worker walkaround representative designation process.

The OMA is dedicated to protecting and growing manufacturing in Ohio by representing over 1,300 manufacturers where safety and health are paramount to their operations. For more than 100 years, the OMA has supported reasonable and necessary regulations that promote the safety and health of employees who work for OMA member companies. RIN 1218-AD45 is neither reasonable nor necessary to promote safety or health at work.

History of OSHA's Walkaround Representative Policy

Under current federal OSHA regulations, outside union officials and other third parties who do not work at the site are not automatically entitled to accompany an OSHA inspector during an OSHA inspection, often referred to as a "walkaround."

Per current regulation, a third party is permitted to attend an inspection only if OSHA believes "good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace." CFR § 1903.8(c).

On February 21, 2013, OSHA issued a letter of interpretation authored by then Obama-era OSHA Deputy Assistant Secretary Richard Fairfax (the Fairfax Memo) in response to questions posed by the United Steelworkers of America union. The Fairfax Memo unilaterally permitted union representatives or other third parties to accompany OSHA inspectors during onsite inspections even if the worksite was non-union and the "representative" was not an employee of the employer. This interpretation expanded who could accompany an OSHA inspector on a walkaround from "industrial hygienist or safety engineer" as defined by the

OSH Act, to unions, community organizations, and virtually anyone else acting on behalf of employees.

The National Federation of Independent Businesses sued OSHA in federal district court alleging that the Fairfax Memo's interpretation of the OSH Act amounted to a legislative rule adopted without notice and comment as required by the Administrative Procedures Act of 1946.

OSHA moved to dismiss the lawsuit, but the court found that the NFIB had stated a claim upon which relief could be granted. Before resolution of the lawsuit, however, President Trump was sworn into office, and on April 25, 2017, the Trump administration formally rescinded the guidance set forth in the Fairfax Memo, and the NFIB withdrew its lawsuit.

President Biden, who has repeatedly said, "I intend to be the most pro-union president leading the most pro-union administration in American history," has, through RIN 1218-AD45, resurrected *and expanded* the Fairfax Memo's ideologies.

Proposed Changes to OSHA's Walkaround Representative Policy

The Executive Summary of RIN 1218-AD45 concedes, "a district court concluded that [the Fairfax Memo's] interpretation was not consistent with the regulation." OSHA is now using the rulemaking procedure to legitimize its position that unions and other third-party representatives may accompany employees during OSHA inspections. This rule seeks to make two significant and unnecessary changes to the law.

First, the current regulation states: "[t]he representative(s) authorized by employees **shall be an employee** of the employer." (emphasis added) The proposal rule would change this language to: "The representative(s) authorized by employees **may be an employee** of the employer **or a third party**."

Second, the current regulation allows a non-employee "such as an industrial hygienist or a safety engineer" only if it "is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace." In practice, only those with technical expertise and credentials, or perhaps a unique language interpreter, have been permitted to accompany an OSHA inspector on an inspection.

The proposed rule eliminates the requisite technical credentials when stating that a third-party representative may be "reasonably necessary" simply because of "relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language skills."

These changes do not make the workplace safer or healthier. They simply remove any qualifying barriers to who can traipse through a worksite. The Notice of Proposed Rulemaking admits this, too, when it states:

There are a multitude of third parties who might serve as representatives authorized by employees for purposes of the OSHA walkaround inspection, [including] worker advocacy organizations, labor organization representatives, consultants, or attorneys who are

experienced in interacting with government officials or have relevant cultural competencies may be authorized by employees to represent them on walkaround inspections.

Permitting just about anyone to accompany an OSHA inspection would convert the inspection form being focused on workplace safety to being an organizing tact for unions, a litigation strategy for attorneys, and an opportunity to harass employers.

The Impact of the Proposed Changes to OSHA's Walkaround Representative Policy

Union Organizing

The OSH Act has always allowed an employee who is represented by a union to accompany OSHA inspectors conducting onsite inspections. But the proposed rule would allow union representatives access inside non-union workplaces.

This would give unions unprecedented leverage in union organizing campaigns by granting them the unfettered ability to communicate directly with non-union employees during an OSHA inspection while those employees are at work. Pro-union employees could file OSHA complaints and select a union representative to accompany the CSHO on the walkaround. Unions would also be incentivized to monitor OSHA complaint filings, contact employees, and attempt to receive authorization to attend walkarounds. Unions could then take credit for any subsequent OSHA citations in a thinly veiled attempt at demonstrating their value to non-union workers. Moreover, since anyone can file an OSHA complaint, a strong argument could be made that if the union files the OSHA complaint, the union is automatically an interested party and entitled to accompany the CSHO on the walkaround.

Expansion of Inspection

CSHOs are only permitted to inspect allegations in the complaint or anything they see in plain view. This is called the "plain view doctrine." The proposed rule would expand the plain view doctrine by allowing union officials, community organizers, or others to physically walk with the CSHO but constantly scan other parts of the employer's facility to find potential violations of the OSH Act while the OSHA inspector is focused on inspecting the allegations of the complaint.

These additional sets of eyes could nefariously bring attention to unrelated parts of the facility necessitating a detour of the inspection. That detour would not only delay the conclusion of the inspection, but it could effectively convert a targeted inspection based on a complaint to an unnecessarily comprehensive and time-consuming "wall-to-wall" inspection. OSHA has neither the personnel nor budget for this effect.

Bilingual

The Notice of Proposed Rulemaking permits CSHOs to allow bilingual community organizers or advocates with no relevant safety experience access to employees and the work site during an inspection solely because of their language skills. This is a big departure from the current rule that permits bilingual individuals if they have the requisite technical credentials.

If communicating with non-English speaking workers is a goal of OSHA, then OSHA could send one of its inspectors who speak the same language as the employee. Or OSHA could retain the services of an accredited translator. But that is obviously not the goal of the proposed rule. Instead, the rule is focused on allowing anyone employees desire to accompany them on the inspection and walk throughout the private parts of an employer's property.

Trade Secrets

The proposed rule effectively permits anyone to accompany a CSHO during a walkaround inspection. This unfettered access to an employer's private property does not make the workplace safer or healthier. Alternatively, it exposes the employer's trade secrets and proprietary information to the public who has no legitimate right to access the private property or know the proprietary information.

Employers may be able to restrict third-party access to areas containing proprietary information, according to the proposed rule. But there is neither a guarantee that the restriction will be followed by the CHSO, that through the expansion of the plain view doctrine the third-party would not discover proprietary information in an area not within the scope of the initial inspection, or that the employer, CSHO, and third-party would not agree on whether the inspection will reveal proprietary information.

From a practical perspective, employers will declare the entire property is rife with proprietary information and deny any third-party access to it. This will result in delayed investigations, search warrants, and litigation over whether the third-party is entitled to accompany the CSHO and the parameters of that entitlement.

Attorneys Litigating against the Company

Another potential abuse of this unnecessary extension of law is attorneys for injured or deceased workers who are preparing to sue an employer or are in the middle of a lawsuit against the employer. These unscrupulous attorneys could gain access to the inner workings of a company and discover things that are beyond the scope of the discovery process and the attorney would otherwise never have learned. Litigation has strict discovery procedures. The proposed rule would effectively make many of those procedures moot.

CSHO has Complete Discretion

The participation of non-employees during an OSHA walkaround would not need the employer's approval. With only an inspector's permission, a community activist or a union's safety expert could participate in the inspection of a non-union manufacturer.

This authority is given to CSHOs without any oversight. CSHOs have the "authority to resolve all disputes as to who the representative is authorized by the employer and employees for the purpose of this section" 29 CFR 1903.8(b).

Nothing guides the CSHOs' decisions to ensure they follow the law. As drafted, the new rule will leave employers with no recourse, short of refusing an inspection, if a CSHO selects someone to accompany him or her on the inspection that the employer objects to joining the inspection.

Although the proposed regulation *currently* requires a CSHO to determine that the presence of a third party is "reasonably necessary," OSHA's request for public comments suggests it may scrap that requirement. OSHA has asked whether it should "defer to the employees' selection of a representative" without consideration of whether that representative would aid in the conduct of the inspection. This complete abscondence of a check and balance of who has access to a private company's property is absurd.

If finalized, the proposed rule will insert instability and unpredictability into the inspection process. It will open an unprecedent avenue for union organizing. And it will cause delay and increased expense to everyone involved in the OSHA inspection process.

The OMA appreciates the opportunity to provide these comments. If OSHA has any questions regarding the foregoing, please do not hesitate to contact me at (614) 224-5111.

Sincerely,

James Lee
Director of Public Policy
Ohio Manufacturers' Association

cc: Matt Shurte, Committee Chair

DeWine Issues Emergency Order Banning Intoxicating Hemp

Bills in this Story
SB57 OHIO BITCOIN RESERVE ACT (O'Brien, S)

Mentioned in this Story
Governor Mike DeWine (R)
Rep. Tex Fischer (R-Youngstown)
Rep. Matt Huffman (R-Lima)
Rep. Dani Isaacsohn (D-Cincinnati)

Gov. Mike DeWine on Wednesday issued an emergency order requiring all retailers to remove intoxicating hemp products from their shelves and to refrain from selling intoxicating hemp products beginning on Tuesday, Oct. 14.

“Intoxicating hemp is dangerous,” DeWine said during a press conference at the Riffe Center, noting the "adulterated" products are being marketed to children and have caused drug poisoning.

“Intoxicating hemp products are known to have significant impacts on young, developing brains, yet these products are legally marketed to kids, sold to kids, and ingested by kids in Ohio,” DeWine said. “When voters chose to legalize marijuana, they voted for a highly regulated market that only allows sales at licensed dispensaries to those 21 and older. Intoxicating hemp completely bypasses these laws, and we must do more to keep these products away from kids.”

DeWine said the effective date of the order was designated for Oct. 14 to give retailers time to remove intoxicating hemp products from their shelves. When the order is active, local and state officials -- including the Ohio Department of Agriculture (ODAg) -- will have the authority to seize intoxicating hemp products still available for sale. Retailers who continue selling intoxicating hemp could be fined $500 each day the products remain on sale, according to the governor’s office.

DeWine said the consumer product safety emergency will be in effect for at least 90 days, noting the General Assembly would have to take action for the emergency to last longer.

Additionally, the executive order directs ODAg to change the administrative rules that define "hemp" and "hemp products" to clarify that "intoxicating hemp" is not considered hemp or a hemp product. That rule will also take effect on Oct. 14, and will be valid for 120 days while the regular rulemaking process moves forward with the Joint Committee on Agency Rule Review (JCARR).

DeWine said the order doesn't apply to "non-intoxicating" hemp products, but didn't elaborate on which products exactly were exempt from the order.

While DeWine has said in the past that he didn't have the authority to take action on intoxicating hemp through executive action, he told reporters he asked his attorneys to take a second look at the issue. He said the attorneys determined the course of action announced Wednesday was legal and appropriate.

House Speaker Matt Huffman (R-Lima) told reporters that he believes the General Assembly will be able to come up with a solution to the intoxicating hemp issue over the next 50 or 60 days, but "certainly" in 90 days.

"For those who are selling these products, is that reasonable? Certainly from their standpoint, it's not. You know, I also understand that," Huffman said. "I think those folks should understand, whenever you enter into these kinds of endeavors, and the regulatory framework and legal framework is unclear, you go forward at your peril. If you want to try to sell beer in the state of Ohio, how you have to do it … and how you can make it and if you can get a license, it's all pretty clear, but I don't think anybody in the state of Ohio looked at folks who were selling these intoxicating products through a U.S. Department of Agriculture federal law and said, therefore, I get to do whatever I want.I do think it means that we should … act with haste."

Rep. Dani Isaacsohn (D-Cincinnati) told reporters that he agrees with DeWine that intoxicating hemp needs to be regulated, but isn't sure whether an executive order is the right way to go about it. He said he's also concerned about potential legal challenges.

After DeWine made the announcement, Dakota Sawyer with American Republic Policy (ARP) and Rep. Tex Fischer (R-Youngstown) held a press conference criticizing the order.

Sawyer said the situation with intoxicating hemp is not a "public health emergency," even if he does agree that intoxicating hemp should be regulated to ensure children can't access the products.

"Where is the public health emergency for tobacco, when people are dying of lung cancer? Where's the public emergency for alcohol, when people are committing DUIs and killing people on the streets?" Sawyer said. "Hemp itself hasn't killed a single person in the U.S., but

executive order will kill small businesses."

Asked whether his organization is planning to file a lawsuit over the order, Sawyer said ARP's attorneys are looking over their options.

Fischer said he shares a lot of the same concerns as the governor, but believes the order is too broad, because it's unclear what is covered. He said the order could potentially affect beverages, medicinal products and topicals, among other items.

"This is an issue that needs to be addressed with a scalpel, and he's using a machete," Fischer said, predicting millions of dollars of products will be seized or destroyed, and businesses will close. "That's not acceptable."

Fischer also said the order sets a bad precedent.

"What is to stop the governor from … defining a sugary drink as a public health emergency?" Fischer said.

Fischer said he will continue his work to address the issue legislatively.

Ohio Cannabis Coalition (OHCANN) Executive Director David Bowling issued the following statement:

"As members of Ohio's regulated cannabis industry, we applaud the governor's executive order addressing the spread of dangerous, intoxicating hemp products. For too long, the hemp industry has recklessly exploited the Farm Bill loophole to line its pockets at the expense of Ohioans' health. Until today, unregulated synthetic hemp-derived cannabinoids were sold openly, putting consumers, especially children, at risk.Adult Ohioans deserve safe, regulated, and tested products they can trust. Our industry has always been invested in the communities where we live, work, and do business, and we will continue that commitment."

The Ohio Manufacturers' Association (OMA) also applauded DeWine's order.

"Manufacturers across Ohio are deeply concerned about the spread of intoxicating hemp products and their impact on workplace safety," OMA President Ryan Augsburger said. "These products have created real challenges for employers seeking to maintain safe, drug-free workplaces. The governor's action reinforces the importance of clear, consistent rules that protect workers and ensure Ohio remains a safe state to do business. Ohio manufacturers are committed to fostering safe, productive environments for their employees and communities. By prioritizing public safety and regulatory clarity, Gov. DeWine is helping strengthen the foundation for a safer, more responsible business climate in Ohio."

The U.S. Hemp Roundtable said DeWine's order will "devastate small businesses and mine years of bipartisan work to establish a safe, regulated hemp marketplace."

"Gov. DeWine's executive order is a misguided overreach that threatens to shutter hundreds of Ohio small businesses and wipe out millions in legitimate economic activity," saidJonathan Miller, general counsel of the U.S. Hemp Roundtable. "We are outraged that the governor is attempting to bypass the Ohio Legislature and misuse executive powers to deliver a crushing, job-killing blow to the state's hemp industry. Hemp products are legal under both Ohio and federal law -- this order simply isn't supported by statute or precedent."

The U.S. Hemp Roundtable said while it supports "reasonable safeguards to ensure product safety and prevent youth access," the governor's order goes too far.

"We share the governor's goal of keeping unsafe or youth-targeted products off the shelves," Miller said. "But this action unfairly targets responsible American hemp companies that follow the law and operate transparently. Instead of prohibition, Ohio should pursue regulation -- setting age limits, mandating independent third-party testing, requiring accurate labeling, and ensuring products are made with American-grown hemp."

The U.S. Hemp Roundtable said it will continue working with the General Assembly to "enact fair, balanced, and science-based rules" that protect consumer and small businesses.

"We implore Ohio legislators to reject this executive overreach and continue developing a thoughtful, evidence-based approach that distinguishes hemp from marijuana, supports responsible businesses, and respects the intent of the 2018 Farm Bill and Ohio's own 133-SB57 (Hill-S. Huffman)," Miller said.

Story originally published in *The Hannah Report* on October 8, 2025. Copyright 2025 Hannah News Service, Inc.

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BIZ & LABOR HEALTH CARE POLITICS & GOV

What is delta-8 and why does Ohio Gov. DeWine want to ban it?

BY: **MORGAN TRAU** - JANUARY 17, 2024 4:40 AM

Delta-8 THC caution label. (Photo by WEWS.)

Ohio Gov. Mike DeWine is urging lawmakers to ban delta-8 THC, a cannabis product under-regulated by the state, amid protests from consumers that it is essential for their health.

THC changed Jeremy Torchinsky's life — for the better.

"I was actually someone who was pretty addicted to pain pills and alcohol and other bad stuff," Torchinsky said. "I don't do that anymore."

He credited hemp products for helping him get off the substances, saying it has helped with managing pain, dealing with trauma and combatting social anxiety.

"I use it for the therapeutic aspects of it," he added.

Retailers like Joel Fink, owner of Fantasy Candies Chocolate Factory and Blue Planet Chocolate, help him get access to it.

Fink isn't a medical marijuana dispensary owner, but he is able to sell low-level THC amounts, often as delta-8. He is also a hemp processor.

Delta-8 is a cannabinoid produced by the cannabis plant. Many users WEWS/OCJ spoke to used delta-8 to help with health issues or chronic illnesses. Delta-9 THC is the most common and is considered as regular marijuana.

"I would say we probably have about 20-25 per day that come in that are looking for, not necessarily a delta-8 or delta-9, but something to help them out," Fink said. "It's just amazing some of the successes that we've had."

Congress' Agriculture Improvement Act of 2018 allowed for hemp products to be sold as long as they have .3% THC or less.

"Delta-8 is sort of like delta-9 light," Fink said. "It gets you about half to two-thirds as high."

U.S. Customs and Border Protection issued guidance on their website that under the law, the Drug Enforcement Administration no longer has the authority to seize and criminalize sending or buying seeds with less than .3% THC. The DEA has also given this statement to numerous attorneys around the country with the same advice, including specifically addressing cannabis. This could change soon, though.

“It is a huge, huge market and for those of us that are doing it through the hemp program in Ohio, we’re doing it properly,” Fink said.

But he is worried. Gov. DeWine has been begging the lawmakers to get moving on recreational marijuana policy, but he also wants to address hemp.

“Today we have kids who are walking into these places, retail places in Ohio and buying this junk,” DeWine said during a press conference Thursday. “We have no way to prohibit them from getting it.”

Ohio doesn’t have an age requirement to buy delta-8 since it is .3% or less. Thus, hemp products can be sold almost anywhere in the state, and the government has no jurisdiction over it.

“It is intoxicating, it is something that needs to be banned,” the governor continued. “As soon as the legislature can do this, we’ll be able to stop these sales.”

The Senate changed the definition of hemp in its proposals for recreational marijuana policy — raising concerns that it may outlaw delta-8.

DeWine said that at his request, Senate lawmakers are drafting a standalone bill to regulate the selling of it. This may include only allowing licensed dispensaries to sell THC products of any kind.

The governor isn’t alone here. Each medical dispensary WEWS/OCJ has spoken with is not a fan of delta-8 sellers.

However, their reason could also be related to getting rid of competition and wanting all products to face the same health guidelines and scrutiny, according to retailers on each side of the issue.

Some House representatives think adding guardrails could also be helpful.

“I think there is a good chance that there will be some action to deal with the delta-8 and delta-9 products with high THC content,” said state Rep. Jamie Callender (R-Concord). “Those products are currently unregulated and being marketed and sold to minors. I think that regulating the high THC hemp can be accomplished without disturbing the legitimate hemp market.”

Fink agrees that there should be guardrails on age — noting that his customers must be 21. However, getting rid of his ability to sell delta-8 entirely could cause his business, and many others, to suffer.

Right now, many retailers and consumers don’t exactly trust the government to handle marijuana products fairly.

“There’s a lot of people out there that still do need hemp,” Torchinsky argued. “I think it’s ridiculous for the lawmakers to even consider taking this away from you.”

Senate and Gov. versus House

Right now, there are no authorized sellers of recreational marijuana in Ohio. The Division of Cannabis Control isn't set to start processing retailer applications until June, which means users likely won't be able to legally buy marijuana until fall. To learn how to access marijuana, click here.

The state Senate passed a bill to make weed available in medical dispensaries if the proposed law takes effect. The lawmakers took
H.B. 86, which dealt with micro-distilleries, and added their marijuana policy to it.

Their version is seemingly universally hated by House members on each side. It would limit home growth, reduce THC levels and ban the vast majority of vapes. It also raises taxes, a major sticking point for many lawmakers. With this proposal changing the language and definition of hemp, it is unclear what impact that could have on delta-8 users.

Callender, the de-facto and seemingly bipartisan spokesperson for the House on marijuana continues to fight back against the pressure from the Senate and the governor to concur on the other chamber's legislation.

"I want to make sure that here in this chamber, the People's House, that we carry out the will of the people — and the people have spoken," Callender said.

State Sen. Rob McColley (R-Napoleon), the de-facto and seemingly bipartisan spokesperson for the Senate, assured his proposal wasn't going against the will of the people since he believes that the voters didn't really know everything that they were voting on.

"I think what the voters really voted for would have been access to products," the senator added.

State Rep. Jeff LaRe (R-Violet Twp.) is livid about his bill being hijacked for the Senate proposal — one that disregards the "will of Ohioans," he said.

"Slap in the face of Ohio voters," LaRe told WEWS/OCJ in December.

Unfortunately for LaRe, the House sticking to their guns about following the will of the people and ignoring the Senate version hurts his original legislation.

"[H.B.] 86 is dead until we put it back to its original form," he said last week. "Amendment to do so has been drafted."

This article was originally published on News5Cleveland.com and is published in the Ohio Capital Journal under a content-sharing agreement. Unlike other OCJ articles, it is not available for free republication by other news outlets as it is owned by WEWS in Cleveland.

EIGHT THINGS TO KNOW ABOUT DELTA-8

(January 2024)

Delta-8-tetrahydrocannabinol (Delta-8), also known as "marijuana-lite" or "legal weed," is a cannabinoid that is extracted from the cannabis plant. But what exactly is Delta-8, and what does it mean for your drug-free workplace program? Here are eight pieces of information to know about Delta-8:

1. **Close-cousin to THC**: Delta-8 is a naturally occurring cannabinoid found in marijuana and hemp (two plants in the cannabis family). Its chemical structure is very similar to Delta-9-tetrahydrocannabinol (commonly called THC), the high-inducing substance in marijuana.
2. **It can produce a high**: Because its structure is similar to THC, Delta-8 can cause a high. However, Delta-8 is said to be only about half as potent as THC, so the high caused by Delta-8 is a milder one.
3. **Large quantities need to be synthesized:** While naturally occurring, Delta-8 is only found in small amounts in cannabis, making it expensive to extract enough to sell in products. To reduce costs, Delta-8 producers combine cannabis with chemical solvents to synthesize Delta-8 in larger quantities than what naturally occurs in the plant.
4. **The 2018 Farm Bill made Delta-8 legal … maybe:**The 2018 Farm Bill created a distinction between hemp (defined as having less than .3% THC and marijuana (containing more than .3% THC). While marijuana, and products derived from it, remains illegal at the federal level, the Farm bill defined hemp as "… any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." Since Delta-8 is not specifically mentioned, its producers believe this means they can legally sell their product.
5. **The August 2020 Drug Enforcement Administration (DEA) memo made Delta-8 illegal … maybe:**After the 2018 Farm Bill passed, the DEA released a memo clarifying the Farm Bill's impact on the Controlled Substances Act. While it makes no official ruling on Delta-8, it does include a passage that says, "All synthetically derived tetrahydrocannabinols remain schedule I controlled substances." While Delta-8 is naturally occurring, the majority of Delta-8 on the marke is synthesized from CBD. Delta-8 producers are unclear how the DEA classifies this synthetization process (i.e., whether Delta-8 is "synthetically derived") and are still waiting for the DEA to release its specific stance on Delta-8.
6. **Governor Mike Dewine has made an appeal to the Ohio legislature to either ban o establish regulations to Delta-**8 products which would largely involve implementing c restrictions. DeWine presented Delta-8 products at a press conference in January (2024) t

were packaged to imitate sweet treats like like cocoa pebbles, frosted flakes, and candy. Not only is this product easily obtainable by minors, but DeWine expressed dissatisfaction regarding the packaging as it appeals to children. "If it is moved basically under the marijuana protocol, you wouldn't see packaging like that. ... and I would be satisfied with that." DeWine said.

While we wait to see if the legislature takes action, DeWine has encouraged retailers to do the right things and remove Delta-8 items from their inventory.

7. **Available to anyone who wants to buy it:**While Ohio has regulated Delta-8 related to *medical* marijuana, Delta-8 products are currently being sold openly and assumed legally in smoke shops, gas stations, local pharmacies and newsstands across the state. And because it is currently unregulated, there are no age restrictions on who can purchase it.
8. **Use at your own risk:**Because Delta-8 isn't regulated by the Food and Drug Administration, there is no oversite around product labeling or assurances that the labels are correct. At least two different organizations have tested Delta-8 products to check the accuracy of product labels. In one study, all but one of the 16 products tested contained Delta-9 THC, and several had traces o heavy metals. In the other study, over half had illegal levels of Delta-9 THC, and over 60% contained less Delta-8 than the label claimed.

Besides all the buzz about Delta-8 being "legal weed," it's also important to recognize there are complications around the question, "Will Delta-8 show up and, if so, be reported in a drug test?" Standing between that question and a definitive answer are answers to secondary questions like,

- "What type of test technology is being used?"
- "Are there are any authorities – like the Department of Transportation (DOT) – at play?"

This heavily nuanced issue can create hardship in the workplace – especially for the employee who uses Delta-8, presumably legally, yet tests positive on a workplace test.

It's important to stay informed about current drug trends so you (and your employees) can make educated decisions when it comes to your drug-free workplace program. Stay informed by following *Working Partners*® on Facebook or visiting our website www.workingpartners.com.

GOLDBERGSEGALLA

Anticipated Regulatory Changes with OSHA

April 7, 2025

Robert W. Cla rk, Thomas More Buckley

With President Donald Trump now in his second term, several changes to the Occupational Safety and Health Administration (OSHA) are anticipated based on his previous administration's approach , current policy signals, and the broader deregulatory agenda he has cham pioned. Here's what we expect:

1. **Full OSHA Enforcement Remains Suspended:** The Occupational Safety andHealth Commission (OSHRC),

   the body that adjudicates contested OSHA citations and penalties, has lacked sufficient members to form a quorum since April 28, 2023, and the remaining commissioner's term expires next month. OSHRC members are appointed by the president, with the advice and consent of the Senate, and are required by law to act only with a quorum of two of the three-member commission. Deputy Solicitor of Labor Jonathan Snare was recently nominated to serve, but unless he is confirmed before the April 27 expiration of Commissioner Atwood's term, a quorum will still be lacking. Absent a quorum, the significant backlog of cases before the OSHRC will remain unresolved.

2. **Reduced Regulatory Activity:** President Trump's first• term administration (2017-2021) saw a significant slowdown in OSHA rulemaking, with fewer new safety standards developed and a focus on rolling back existing ones. This trend is expected to continue, amplified by the "10-to-1" deregulation initiative, which requires agencies to eliminate 10 regulations for every new one introduced. For example, the Biden-era proposed Heat Injury and Illness Prevention Standard, which aimed to protect workers from extreme heat, is unlikely to be finalized. President Trump's administration paused this rule via a "Regulatory Freeze Pending Review" memorandum issued on January 20, and experts predict it may be scaled back or abandoned entirely, leaving enforcement to OSHA's general duty clause or state- level rules.

3. **Shift in Enforcement Priorities:** During President Trump's first term, OSHA's enforcement softened, with a 10-percent drop in inspectors (from 878 in 2018 to 790 by 2020) and a focus on voluntary compliance programs over punitive fines. This pattern is expected to repeat, with fewer inspections and a business-friendly approach
   emphasizing collaboration rather than penalties, especially for small businesses and first-time offenders. The nomination of David Keeling, aformer safety director at UPS and Amazon, asOSHA head signals a preference for practical, industry-aligned leadership that may prioritize efficiency over aggressive oversight.

4. **Rollback of Biden-Era Rules:** Two key Biden• administration OSHA initiatives are likely at risk: the Walkaround Rule (effective May 31, 2024), which allows third-party representatives (like union officials) to join inspections, and the expanded electronic injury reporting requirements (reinstated January **1,** 2024) . The Walkaround Rule faces legal challenges from business groups, and President

Trump's team could settle these cases by withdrawing it. Similarly, expanded electronic reporting, which requires detailed public-injury data from large employers with 100 or more employees in certain designated high-hazard industries, is expected to be scaled back, as it was in 2019 during President Trump's first term, thereby reducing administrative burdens and recordkeeping requirements on companies.

5. **Legislative Threats to OSHA's Existence:** While not a direct Trump Administration action, Rep. Andy Biggs (R• AZ) reintroduced the Nullify OSHA Act (NOSHA) in February 2025, aiming to abolish OSHA and devolve workplace safety to states and private employers. Though experts consider its passage unlikely due to slim Republican majorities and the need to eliminate the Senate filibuster, it reflects a broader conservative push that aligns with the current administration's goal of shrinking federal oversight. The Trump administration's stance on this bill remains unclear, but the current administration's deregulatory bent suggests sympathy for reducing OSHA's scope.
6. **Impact of Expected Layoffs at NIOSH:** The National Institute of Occupational Safety and Health (NIOSH) was created by OSHA as a research arm for high risk workers and for compiling scientific bases for new regulations. Approximately two-thirds of its workforce was laid off as part of the Department of Health and Human Services layoffs. Given that, it will be difficult or impossible for any new regulations to be promulgated and **NIOSH** investigations conducted in the past, for example into workplace disease outbreaks and certification of respirators, will likely be untenable with the minimal workforce remaining.
7. **State-Level Impact:** Even if federal OSHA scales back, states with their own OSHA plans (e.g., California, Oregon, Washington) will likely maintain or strengthen rules like heat safety standards, creating a patchwork of regulations. This means employers in these states won't see relief from safety requirements despite federal rollbacks.
8. **Leadership and Budget Pressures:** David Keeling's appointment, alongside deputy Amanda Wood Laihow (a former OSHA adjudicator), points to a pragmatic, less regulatory focus. Budget cuts or flat funding, as seen in President Trump's first term, could further limit OSHA's ability to hire inspectors or pursue new initiatives, reinforcing a leaner agency footprint.

President Trump's second term is poised to bring a lighter federal OSHA presence - fewer rules, softer enforcement, and potential reversals of recent policies - while state and industry self-regulation may fill the gaps. Employers should prepare for a shift toward voluntary compliance but remain vigilant about state-specific obligations.

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September 10, 2025

Employer Guide to Key DOL Proposals on Latest Regulatory Agenda

Rob Dickson, David Dorey, Marty Heller, Robin Repass

Fisher Phillips

The US Department of Labor (DOL) just released its latest semiannual regulatory agenda, and employers should tune in. The agency's current proposals include high-priority actions related to joint employer determinations, independent contractor classification, minimum wage and overtime exemptions, workplace safety, and more. Secretary of Labor Lori Chavez-DeRemer said that the DOL's "bold" agenda, which was unveiled on September 4, "focuses on flexibility, transparency, and common-sense reform." Here's your employer guide to some of the agency's key proposals.

1. Joint Employer Status Under the FLSA (RIN 1235-AA48)

The DOL will revisit the standard for determining joint employer liability under the Fair Labor Standards Act (FLSA), which has been a hot-button issue for years now. The agency plans to issue a new proposed rule in December that would guide enforcement and "help promote greater uniformity among court decisions nationwide."

While the details of this proposal remain to be seen, we think the DOL will likely push for a rule that reflects the evolving nature of flexible work arrangements – much like the business-friendly final joint employer rule issued by the agency during the first Trump administration. The 2020 rule was short-lived, as it was (essentially) struck down by a NY federal judge roughly six months after it took effect and then rescinded altogether by the Biden DOL in 2021. Here's a snapshot at how these changing standards have impacted employers:

- The DOL's 2020 final rule narrowed the scope of joint employment liability for wage and hour matters by requiring businesses to exercise "actual" control – such as hiring, firing, supervising, setting pay rates, and maintaining employment records – in order to share liability. Mere theoretical control was not enough to meet the standard. You can read more about the four-factor test here.

- The Biden administration's rescission of the 2020 rule ushered in the return of a broad definition of joint employment for FLSA purposes and a standard that focuses on whether an employer "retains the right to control" essential terms and conditions of employment – even if that right is not actually exercised. This expansive approach has major implications across industries, potentially exposing many more businesses to wage and hour liability.

> **Note:** The National Labor Relations Board and other federal agencies may apply different joint employer tests in other contexts. Notably, the NLRB is not even included as an agency in the latest regulatory agenda, which is governmentwide.

2. Independent Contractor Classification Under the FLSA (RIN 1235-AA46)

The DOL intends to rescind a 2024 final rule that that made it harder for businesses to classify workers as independent contractors. This comes as no surprise, as the agency announced in May that it would no longer enforce the Biden-era rule (which remains under challenge in five separate lawsuits that are currently stayed) and instead would be relying for the time being on earlier enforcement guidelines.

The DOL is now considering how it will proceed with respect to independent contractor classification under the FLSA. While the agency has not yet provided any details on such plans (only that a proposal will be issued sometime this month), we would not be surprised to see it propose a rule that gives businesses more flexibility and certainty (but read more on why this will be a real litmus test for Secretary Chavez-DeRemer).

Note: The National Labor Relations Board and other federal agencies may apply different independent contractor tests in other contexts.

3. Overtime Salary Threshold Under the FLSA (RIN 1235-AA39 and RIN 1235-AA47)

The DOL is currently reviewing the Biden administration's overtime rule – which dramatically boosted the salary threshold for the FLSA's so-called "white collar" overtime exemptions but was blocked nationwide by a federal judge before its full effective date – and determining how to proceed.

But don't expect the agency to move quickly on this one – its two proposals related to the overtime rule are on a separate "Long-Term Actions" list and reflect that the DOL has not yet determined the type of actions it will take or any timeline for doing so. In the meantime, the DOL is enforcing the salary threshold set in its 2019 rule (roughly $35K).

4. FLSA Exemption for Domestic Service Workers (RIN 1235-AA55)

In addition to the proposals above, the DOL's Wage and Hour Division is also moving forward with a proposed rule, which was first issued in July, that would restore the ability of third-party employers to claim the FLSA's "companionship services" exemption and the exemptions for "live-in" domestic service workers, which have been unavailable due to a regulation issued in 2013. The comment period for the new proposed rule ended on September 3.

5. Heat Safety Rule (RIN 1218-AD39)

While many thought the Trump Occupational Safety and Health Administration (OSHA) would shelve the first-ever proposed national heat standard, the agency moved forward with the proposal earlier this year by opening a post-hearing comment period that ends September 30. OSHA is expected to consider feedback received during the comment period, with significant attention on requests for more flexibility and performance-oriented approaches. In the latest regulatory agenda, OSHA indicated

that it intends to develop a final rule that "adequately protects workers, is feasible for employers, and is based on the best available evidence."

6. Other Key OSHA and MSHA Proposals

The DOL's regulatory agenda also includes other workplace safety proposals from OSHA and the Mine Safety and Health Administration (MSHA). Here are some of the key items:

- **New Emergency Response Standards (RIN 1218-AC91).** OSHA is continuing to work toward finalizing a broad emergency response standard, which was first proposed last year in an effort to overhaul and expand the fire brigade rule. OSHA is currently analyzing stakeholder feedback and plans to complete its comment analysis in November – stay tuned to see if the proposed rule ultimately gets modified or finalized as is.

- **Updates to the Respiratory Protection Standard (RIN 1218-AD48).** OSHA also is moving forward with a proposal that would remove medical evaluation requirements for filtering facepiece respirators and loose-fitting powered air-purifying respirators. The proposed rule was issued in July, and the comment period ended on September 2. In adding the rule to its regulatory agenda, OSHA said that modernizing the regulation would "allow increased productivity and reduce the regulatory burden on employers with workers who wear respiratory protection."

- **MSHA Deregulatory Proposals (RINs 1219-AC18, 1219-AC19, and 1219-AC21).** MSHA added various proposals to the regulatory agenda, including three new rules that would significantly curtail the authority of District Managers related to plan approval criteria (for roof control and mine ventilation plans) and training and retraining of miners.

Where Does OSHA's 2024 "Walkaround" Rule Stand?

- **Background:** Last year, OSHA issued a new final rule allowing employees to designate third parties – including union representatives – to accompany an

OSHA inspector during a facility walkaround. The new rule, which took effect on May 31, 2024, gives labor unions an advantage because it grants union representatives access to the property of non-union employers and allows them to directly interact with non-union employees.

- **The Latest:** Unfortunately, OSHA has not yet weighed in on the validity of the walkaround rule and did not include any plans related to it on the latest regulatory agenda. However, the rule remains under challenge in a lawsuit brought by business groups last year, so stay tuned to see how that plays out.
- **Note on State Plans:** The 2024 final rule required OSHA-approved State Plans to, within six months, adopt regulations that are identical to or "at least as effective" as OSHA's walkaround rule (unless they could demonstrate that their existing requirements are at least as effective in protecting workers) – and several of the State Plans have adopted the rule. In such states, the rule could remain applicable even if federal OSHA ultimately decides to rescind it (or if the rule is otherwise blocked by a court).

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Biden's OSHA Updates Electronic Recordkeeping Directive Before Transition – But Will New Administration Change Course?

Insights
1.31.25

In the last days of President Biden's administration, federal workplace safety officials issued an updated compliance directive on the controversial electronic recordkeeping policies and procedures rule that took effect last year – but questions remain about whether the rule itself will be scrapped under the new administration. The updated directive from the Occupational Safety and Health Administration (OSHA) is intended to replace a 2004 publication to reflect the agency's current views on policies and information and incorporate necessary revisions given regulatory changes that have occurred since then. What do employers need to know about this new directive – and what does the future hold?

Quick Background

A long-anticipated workplace safety rule took effect at the beginning of 2024 that prompted changes for certain employers that need to submit work-related injury and illness data. Specifically, the controversial electronic recordkeeping rule updated the list of employers considered to be in "high-hazard" industries and created new obligations for some employers. You can read all about the rule here.

Biden's Last OSHA Directive

Days before turning over the keys to the Trump administration, Biden's OSHA issued a Recordkeeping Policies and Procedure Directive to clarify certain workplace safety rules. Among the most significant:

- The final rule issued in 2014 that revised the requirements of 29 CFR 1904 (Occupation Injury and Illness Recording and Reporting Requirements). This rulemaking updated the list of partially exempt industries and identified those by the **North American Industry Classification System (NAICS) code.** It also expanded the reporting requirements in section 1904.39 to include all work-related in-patient hospitalizations, amputations, and losses of an eye.
- The 2016 amendment to the recordkeeping regulation at 29 CFR 1904.41 that requires certain establishments to **submit information from their recordkeeping forms (Forms 300, 300A, and 301) to OSHA on an annual basis.**

- The final rule issued in 2019 that removed the 2016 requirement for establishments with 250 or more employees to electronically submit information from their OSHA Forms 300 and 301 to OSHA once a year – although those establishment must continue to be maintained on-site. As a result, those **establishments were required to electronically submit only information from their OSHA 300A annual summary.** Establishments with 20 to 249 employees in certain designated industries also continued to be required to submit OSHA Form 300A, as required by the 2016 rule.
- The 2023 rule that **further revised and expanded the requirements to electronically submit injury and illness data under section 1904.41.** The 2023 final rule requires establishments with 100 or more employees in designated industries to electronically submit certain information from their OSHA Form 300 and OSHA Form 301 to OSHA once a year. The 2023 final rule also updated the list of designated industries in which establishments with 20-249 employees must annually electronically submit information from their OSHA Form 300A annual summary and continued the requirement that establishments with 250 or more employees in all industries routinely required to keep Part 1904 records must annually electronically submit such OSHA Form 300A information.

What's Next?

It is unclear how the new administration may impact the existing regulations, be it the recordkeeping requirements or the requirement to file electronically. Our team predicts that new OSHA leadership under President Trump will once again re-visit electronic submission requirements, and you can expect the pendulum to swing back as it did under the first Trump administration. The agency could once again put electronic submission requirements back on the shelf. You can read all of our predictions here, including a deeper dive on the electronic recordkeeping rule.

What Should You Do?

It is important to note that, while the directive does not change any existing OSHA rules or regulations, it is an invaluable resource for safety professionals and organizations. Moreover, even though we predict that the rule will be scrapped or watered down, you need to comply with all of its requirements until that happenes.

✅ Employers with 11 or more employees during the 2024 calendar year must post their form 300A from February 1, 2025 to May 1, 2025, unless they are in a specifically exempt industry.

✅ The 300A must be posted somewhere employees would see it often, like a break room or bulletin board. Employers are only required to post the 300A summary form, not the entire packet, which includes forms 300 and 301.

✅ Employers must also be prepared to electronically submit their records, if required, by March 2, 2025.

Conclusion

We will continue to monitor updates to OSHA regulations, along with other workplace safety topics, as we receive additional updates about President-elect Trump's transition plans. If you have any questions, contact the authors of this Insight, your Fisher Phillips attorney, or any member of our Workplace Safety Practice Group or Government Relations Team. Visit our New Administration Resource Center for Employers to review all our thought leadership and practical resources, and make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information on OSHA issues.

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Trump's War on OSHA Could Spell the End for Biden-Era Heat Protections

A proposed rule from the Biden administration would protect 36 million workers from the hazards of extreme heat.

By Michael Arria, TRUTHOUT
June 8, 2025

Rep. Greg Casar, D-Texas, speaks during a vigil and thirst strike for workers' rights on the House steps of the U.S. Capitol on July 25, 2023. The strike follows a letter from Casar and over 110 members of the Congress sent to the Biden administration to "implement an Occupational Safety and Health Administration workplace heat standard as quickly as possible."

TOM WILLIAMS/CQ-ROLL CALL, INC VIA GETTY IMAGES

In July 2024, the Biden administration proposed a rule (https://www.dol.gov/newsroom/releases/osha/osha20240702) to address heat-related illness that it claimed would protect 36 million workers.

The directive would have required companies to monitor workers for heat stress, provide them with cool-down breaks in shaded or air-conditioned areas, and ensure that they were given ample water.

"The purpose of this rule is simple," a White House official told (https://apnews.com/article/biden-heatwave-climate-change-deaths-workplace-osha-b70273c6b266a8e3785da1f52c4d1a79) reporters at the time. "It is to significantly reduce the number of worker-related deaths, injuries, and illnesses suffered by workers exposed to excessive heat ... while simply doing their jobs."

The rule would have represented the first federal standard aimed at regulating the increasing dangers of climate change, but it was never finalized. And now, with Donald Trump in the White House, there is very little hope that it will be implemented.

The Nomination of David Keeling to Head the OSHA

In February, Trump nominated David Keeling to head the Occupational Safety and Health Administration (OSHA). Keeling has yet to be confirmed, but seeing as he is a former executive for Amazon and UPS, most assume that he won't be embracing the proposed heat rule.

Keeling oversaw health and safety protocols at those companies, and, according to an investigation by *The Lever*' (https://www.levernews.com/workers-overheated-and-died-under-trumps-workplace-safety-nominee/)s Sam Pollak, they collectively received over 300 workplace safety citations while he was in charge, which added up to $2 million in OSHA fines. The citations included multiple heat-related incidents.

Republicans aren't waiting until Keeling takes power to challenge the Biden administration's proposed regulations. On March 19, Rep. Tim Walberg (R-Michigan), chair of the House Education and Workforce Committee, sent a letter (https://edworkforce.house.gov/uploadedfiles/03.19.25_letter_to_dol.pdf) to newly confirmed Labor Secretary Lori Chavez-DeRemer calling for the Department of Labor (DOL) to withdraw from the rule and rescind several additional OSHA directives.

"The committee recognizes that many burdensome regulations were developed at DOL during the Biden-Harris administration," Walberg wrote (https://edworkforce.house.gov/uploadedfiles/03.19.25_letter_to_dol.pdf).

When the GOP-controlled committee held a hearing on May 15, the subject was OSHA's alleged "overreach" on heat regulations. The Republicans showcased testimony from a number of pro-business witnesses including Felicia Watson (https://edworkforce.house.gov/uploadedfiles/watson_testimony.pdf), senior counsel at Littler Mendelson (https://prospect.org/justice/2023-10-05-lawyers-not-persuaders-littler-mendelson/), which backs employers and has a history of defending union-busting.

"I've talked to people in New Mexico who say 80 degrees is a great day to build — it's perfect weather and you might have something completely different in Florida," claimed Watson.

These sentiments were echoed by another Republican witness, Jake Parson, an executive at a building materials company who testified on behalf of the National Association of Manufacturers. Parson told (https://edworkforce.house.gov/uploadedfiles/parson_testimony.pdf) the Congress members that, "When it comes to heat, what makes sense for Maine will not make sense for Texas."

"OSHA standards are the bare minimum when it comes to workplace safety. Any lawmaker who wants to undo them just wants their billionaire backers to make another cent."

Both witnesses were challenged by Rep. Greg Casar (D-Texas), a committee member who went on a thirst strike (https://casar.house.gov/media/press-releases/news-congressman-greg-casar-ends-8-hour-thirst-strike-us-house-steps) in 2023 to highlight the need for a federal workplace heat standard.

"It sounds like what you're saying is we have different conditions in Maine than in Texas," said Casar. "But what I'm confused about is if it's 90 degrees in Austin or 90 degrees in Maine, 90 degrees is still 90 degrees."

State Regulations

Without strong guidelines at the federal level, workers have to rely on the rules of their state.

California, Colorado, Maryland, Minnesota, Nevada, Oregon, and Washington have all adopted (https://www.americanprogress.org/article/states-must-lead-the-way-to-protect-workers-from-extreme-heat/#:~:text=State%20plans%20with%20heat%2Dspecific,specific%20settings%20in%20varying%20ways.) workplace heat protections of some kind and similar efforts are being pushed Arizona, Massachusetts, New Jersey, New Mexico, New York, and Rhode Island.

"Policymakers don't have to start from scratch," notes (https://www.americanprogress.org/article/states-must-lead-the-way-to-protect-workers-from-extreme-heat/#:~:text=State%20plans%20with%20heat%2Dspecific,specific%20settings%20in%20varying%20ways.) a recent report from the Center on American Progress. "Current state policies and the Biden administration's draft heat standard provide guidance for adopting or adapting occupational heat standards and can strengthen protections for outdoor and indoor workers."

This fight has proved to be an uphill battle in states run by anti-regulation Republicans.

In April 2024, Florida Gov. Ron DeSantis signed legislation barring (https://www.huffpost.com/entry/desantis-signs-florida-heat-bill_n_65fdbe00e4b07c954d55a297) Florida localities from requiring companies to provide outdoor workers with rest, shade, and water. The move effectively killed a Miami-Dade effort to establish such protections in the county.

At a press conference, DeSantis admitted that the GOP plan was developed to invalidate the Miami victory.

"There was a lot of concern out of one county, Miami-Dade. And I don't think it was an issue in any other part of the state," the governor explained. "I think they were pursuing something that was going to cause a lot of problems down there."

Labor advocates in Austin faced a similar setback in 2024, when Texas Gov. Greg Abbott passed the "Death Star" law, killing a rest-break ordinance passed (https://www.austinchronicle.com/news/2024-06-28/federal-heat-rule-proposed-following-texas-bill-that-stripped-worker-protections/) by the city.

Texas AFL-CIO Organizing and Advocacy Director Ana Gonzalez told *Truthout* that such developments highlight the need to build bargaining power in the workplace.

"OSHA standards are the bare minimum when it comes to workplace safety. Any lawmaker who wants to undo them just wants their billionaire backers to make another cent," said Gonzalez. "Texans have weathered worse storms, but with hotter summers, we must unionize every workplace to demand better safety standards. Otherwise, our state will keep leading the nation in workplace fatalities and injuries."

Trump's Wider War on OSHA

The Trump administration's war on workplace safety, is certainly not limited to heat regulations.

President Trump has effectively shut down (https://www.usnews.com/news/health-news/articles/2025-04-01/major-job-cuts-at-niosh-pose-risks-to-worker-safety-critics-warn) the National Institute for Occupational Safety and Health, closed (https://prospect.org/labor/2025-04-18-osha-office-closure-cancer-alley-louisiana/) multiple local OSHA offices, allowed Elon Musk's "Department of Government Efficiency" initiative to access (https://www.wired.com/story/elon-musk-doge-osha-whistleblower-files/) sensitive OSHA files, and paused (https://inthesetimes.com/article/trump-silica-rule-coal-miners-union) a rule on silica exposure, which can lead to severe health problems such as lung cancer.

A recent report (https://www.epi.org/blog/too-many-workers-die-on-the-job-every-year-trumps-attacks-on-osha-will-kill-more/) from the Economic Policy Institute points out that between 5.2 million to 7.8 million workers already suffer work-related injuries and illnesses each year, a number that is likely to rise under the Trump administration.

The report also notes out that weakened workplace regulations disproportionately impact workers of color, immigrant workers, and older workers. Over 33 percent of 2023's workplace fatalities occurred among workers 55 and older, while 67 percent of those killed were immigrant workers. Black and Latino workers are more likely to die

The consumer rights group Public Citizen estimates that heat exposure results in 600 to 2,000 worker fatalities every year.

while working than white workers.

"The bad news is we are facing a national workers' rights crisis, fueled by Trump administration attacks on long-standing worker health and safety protections and OSHA enforcement capacity, all while climate change is intensifying risks of deadly exposures to extreme heat in indoor and outdoor workplaces across the country," the report's coauthor, Jennifer Sherer, told *Truthout*.

"The good news is that states don't need to wait to act, and can craft strong, effective heat standard policies that draw on decades of research and evidence-based best practices for preventing workplace deaths and boosting productivity," she added.

The consumer rights group Public Citizen estimates (https://www.citizen.org/article/boiling-point/) that heat exposure results in 600 to 2,000 worker fatalities every year, and about 170,000 work injuries. The situation threatens to get much worse as temperatures rise as a result of climate change — 2024 (https://www.nasa.gov/news-release/temperatures-rising-nasa-confirms-2024-warmest-year-on-record/) was the warmest year on record. According to the World Meteorological Organization, there's an 80 percent chance that at least one of the next five years will exceed that mark.

OSHA Releases First-Ever National Heat Safety Rule: 10 Steps for Employers

Insights
7.02.24

In a groundbreaking move, federal workplace safety officials announced today the first-ever national heat stress rule aimed at protecting workers from heat-related illnesses and fatalities. The proposed regulations from the Occupational Safety and Health Administration (OSHA) could soon require you to implement robust measures to safeguard your employees from extreme heat both indoors and outdoors – and significantly impact your workplace safety protocols, regardless of industry. The proposal still needs to wind its way through a months-long administrative process and could even be derailed by new standards set by the Supreme Court that take aim at agency overreach, so you'll want to follow the process closely. What are the 10 steps you should consider taking to prepare for the new rule?

Why Did OSHA Propose Heat Safety Rule?

OSHA's initiative, years in the making, follows an increase in heat-related workplace incidents and is part of its broader effort to address the impacts of climate change on occupational health. Currently, the agency relies on its broad General Duty Clause to enforce heat safety in the workplace, which requires employers to furnish a workplace free from recognized hazards which may cause or are likely to cause death or serious physical harm.

The agency has made clear it believes this broad standard is insufficient given the growing number of heat-related worker injuries and fatalities. OSHA noted that "heat is the leading cause of weather-related deaths in the United States." The new rule aims to build on existing state-level heat standards, such as those in California and several other states.

Who Will The Rule Apply To?

The proposed standard would apply to all employers conducting outdoor and indoor work in all general industry, construction, maritime, and agricultural sectors where OSHA has jurisdiction.

Who's Not Covered By the New Rule?

Notably, the proposed rule excludes short-duration employee exposure to heat. Additionally, you will not need to apply these new rules to "sedentary" employees, those in indoor job sites kept below 80 degrees, and remote workers. The same holds true for emergency response workers who

are exempted under the rules. Finally, OSHA regulations don't cover public employees, so the new rules will not apply to government employers.

What Will the New Rule Require?

The proposed OSHA heat safety rule introduces several key requirements aimed at protecting workers from the hazards of excessive heat, including requiring employers to designate a heat safety coordinator and identify heat hazards in both outdoor and indoor worksites. These regulations are designed to address both immediate and long-term risks associated with heat exposure. Below is a detailed breakdown of the most significant new requirements:

Heat Hazard Identification and Assessment

Employers will be required to:

- **Conduct Regular Heat Risk Assessments:** You'll have to evaluate the potential for heat exposure in various job roles and settings. This involves identifying high-risk areas and tasks, especially during peak heat periods.
- **Monitor Workplace Temperatures:** You must implement systems to continuously monitor temperature and humidity levels, particularly during heat waves or periods of extreme heat.

Preventive Measures

The rule will mandate several preventive strategies to mitigate heat-related risks:

- **Hydration:** You'll need to provide workers with accessible drinking water at all times. You will need to ensure that your employees have frequent access to water and encourage regular hydration.
- **Rest Breaks:** The rule will require you to implement scheduled rest breaks in cool or shaded areas to allow workers to recover from heat exposure. The frequency and duration of these breaks will need to increase with rising temperatures.
- **Shade and Cooling Areas:** You'll need to ensure that shaded or air-conditioned rest areas are available for workers to use during breaks. These areas should be sufficiently close to the worksite to allow for quick access.

Training and Education

The proposed rule puts a requirement on employers to:

- **Provide Heat Safety Training:** You will need to educate employees and supervisors about the dangers of heat-related illnesses, the symptoms, and the importance of preventive measures. It should include recognizing early signs of heat stress and appropriate first-aid responses. You'll

need to provide annual refresher training for supervisors, heat safety coordinators, and employees, as well as supplemental training after changes in exposure to heat hazards, company policies and procedures, or the occurrence of the heat injury or illness.

- **Offering Acclimatization Programs:** You will also have to develop and implement acclimatization plans for new and returning workers. This involves gradually increasing workloads and exposure time to build up a worker's tolerance to heat.

Emergency Planning and Response

Some key requirements include:

- **Heat Illness Prevention Plan:** The proposed rule would require employers with more than 10 employees to develop and implement a written worksite Heat Injury and Illness Prevention Plan, including site-specific information to evaluate and control heat hazards in your workplace (employees with 10 or fewer employees will still need a plan, but it can be communicated verbally). You will have to make the plan available to each employee performing work at the site and in a language that each employee, supervisor, and heat safety coordinator understands. You'll be required to evaluate the effectiveness of the plan whenever a heat-related illness or injury occurs that results in death, days away from work, medical treatment beyond first aid, or loss of consciousness, but at least annually. In developing and updating the HIIPP, you'll also be required to seek input from nonmanagerial employees and their representatives.
- **Emergency Medical Response:** You have to develop a Heat Emergency Response Plan and ensure that supervisors and workers are trained to respond effectively to heat-related emergencies, including providing first aid and contacting emergency services.

Recordkeeping and Reporting

Employers will need to:

- **Maintain Indoor Monitoring Data**: You'll be required to maintain written or electronic records of indoor monitoring data for a minimum six months.
- **Create Incident Reporting Processes:** You will have to maintain detailed records of heat-related incidents, including illnesses and near-misses. This data should be used to review and improve heat safety practices.
- **Conduct Regular Audits:** You need to deploy regular audits of heat safety measures and your overall compliance with the new standards. These audits will help identify areas for improvement and ensure ongoing adherence to the regulations.

Additional Requirements for High-Risk Industries

Specific industries, such as agriculture and construction, face higher risks of heat exposure and could see additional requirements under the new rule. They include:

- **Enhanced Protections:** For industries with heightened heat exposure risks, you may need to implement additional safeguards, such as more frequent rest breaks, specialized training, and more rigorous monitoring of environmental conditions.
- **Special Considerations for Vulnerable Workers:** You may also have to offer enhanced protections for vulnerable populations, including temporary, seasonal, and immigrant workers, ensuring they receive adequate training and resources to manage heat stress.

What's Next?

OSHA began the rulemaking process in October 2021, culminating in today's unveiling. The proposed rule will soon be formally published in the Federal Register and members of the public will be permitted to submit comments for 120 days after the date of publication in the Federal Register. Agency officials will then review all of the comments and hold at least one public hearing to discuss the feedback. This process should take several months at least, so expect the next substantive news on this front by late 2024. **[Editor's Note: The proposed rule is scheduled to be formally published in the Federal Register on August 30, 2024.]**

The agency will then take all of the comments into account and publish the rule in final form, perhaps with substantive revisions based on the feedback it receives. We expect that to happen in the first half of 2025.

There are two key dynamics that could come into play to derail the rule, however:

- If we see a change in executive leadership in the White House come January 2025, all bets are off when it comes to the future of the rule.
- Regardless of which party controls OSHA in 2025, you can expect legal challenges to the rule that could see a court block the rule from taking effect as scheduled. Opponents of the rule will no doubt be encouraged by last week's landmark SCOTUS ruling taking power away from federal agencies and handing more authority to judges – which could make it far easier for a conversative judge to delay or strike down the rule before it ever takes effect.

Larger Context Considerations

The next year will see OSHA turning up the heat on employers who don't take heat safety seriously, regardless of what happens with this proposed rule. The agency has already conducted about 5,000 federal heat-related inspections using its National Emphasis Program (NEP) related to heat illnesses and injuries for both outdoor and indoor workers. NEPs are temporary programs that focus OSHA's resources on particular hazards and high-hazard industries.

The heat NEP is effective until April 2025, and it will see OSHA target workplaces where heat-related injuries or illnesses are prevalent during high heat conditions. This includes outdoor

workspaces in a local area experiencing a heat wave or indoor workspaces near radiant heat sources (such as iron and steel mills and foundries).

If you want more detail about the NEP, including how employers will be selected for inspections, you can read our full Insight here.

10 Steps Employers Should Take to Protect Workers this Summer – and Beyond

Regardless of the fate of this proposed rule, here are 10 steps you can take to protect your workers from heat-related injuries and illnesses – and avoid legal scrutiny.

1. **Plan ahead.** Draft a prevention program to mitigate against heat-related injuries and illnesses. Conduct a hazard analysis of all of your job duties or positions that could involve exposure to extreme heat, including an analysis of outdoor and indoor workspaces. If you are in a state OSHA plan location, review your heat illness prevention program plan against any state plan requirements.
2. **Train your workers.** Provide training to all of your workers on how to prevent heat illnesses, and make sure managers know to take the lead when it comes to spotting potential problems and ensuring compliance.
3. **Don't take risks.** Provide medical screening for all workers who will work in high-heat settings.
4. **Keep an eye out.** Designate someone at each worksite to monitor worker health and conditions on days of extreme heat. You may also consider requiring a buddy system on hot days and enforcing a procedure for employees to report heat stress symptoms.
5. **Let them rest.** Provide unscheduled rest breaks and require work/rest periods. It's difficult to quantify specific breaks for specific scenarios in states covered by federal OSHA, so a best practice is requiring rest breaks of up to five minutes in shade every hour, or 10 minutes every two hours, when temperatures are above 87.8°F.
6. **Provide water.** Provide unlimited, easy access to cool water. OSHA has indicated that employees should drink 4 to 6 ounces every 15 to 20 minutes, but no more than 1 quart/hour and 12 quarts/24 hours.
7. **Offer cover.** Provide access to shaded areas and cooling fans. Provide hats for outdoor workers in the sun.
8. **Be flexible.** Consider changing start times and days during a project to avoid high-heat hours. Or consider rotating crews of workers to minimize work during the hottest hours.
9. **Get your workers ready.** Require an acclimatization period for workers not used to working in the heat. This not only includes new employees but existing workers returning to heat exposure or those working during seasonal changes as the weather gets warmer. OSHA provides a full list of detailed recommendations that you should implement for a one-to-two-week period, including guidance on work periods, rest breaks, job tasks, and more.

Frequently Asked Questions for Employers About OSHA's New Final Rule on "Walkaround" Inspections

Insights
5.14.24

The federal government recently issued a final rule permitting third parties – including union representatives – to accompany inspectors during facility walkarounds, raising many questions and concerns for employers from both a safety and a labor perspective. Our Workplace Safety and Labor Relations Practice Groups teamed up to develop this series of FAQs to address all aspects of the new final rule and will update it as new developments occur.

Big Picture

What happened?

The Occupational Safety and Health Administration (OSHA) issued a new final rule on March 29 and published it in the Federal Register on April 1. The final rule amends OSHA's existing "walkaround" rule after a long history led to this rulemaking.

What is OSHA's walkaround rule?

The walkaround rule gives employers and employees the right to authorize a representative to accompany OSHA inspectors during workplace inspections. The walkaround rule has been in place for decades under federal law (29 U.S.C. § 657(e)) and federal regulations (29 C.F.R. § 1903.8).

How does the new final rule change the walkaround rule?

The new final rule expands employees' rights to the presence of a third-party representative.

When does the new final rule take effect?

The new final rule is scheduled to take effect on May 31, 2024.

What Does It Mean?

Does this new rule impact matters beyond site safety?

Yes. This rule change is not an effort to improve the OSHA inspection process. It is designed to provide labor unions an advantage in their organizing efforts. The new rule grants union representatives access to the property of non-union employers and allows direct interaction with non-union employees. This means employers need to know how to address both the safety and labor relations issues that will come up when this new rule is used.

What specific changes does the new final rule make?

The new final rule removes the general requirement that all employee representatives be employees of the employer. Instead, employee representatives may be employees of the employer **or third parties**.

- Before the new rule takes effect, third-party employee representatives "such as an industrial hygienist or a safety engineer" may accompany an OSHA inspector during the inspection if the inspector determines "good cause" shows why the third party's accompaniment is "reasonably necessary" for an effective and thorough workplace inspection.
- Once the new rule takes effect, the reference to industrial hygienists and safety engineers is removed and the inspector's "reasonably necessary" determination may be based on the third party's "relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills."

How do these changes impact employers?

The new final rule allows workers to designate a nonemployee representative – based on a broader set of qualifications extending beyond health or safety skills – to accompany an OSHA inspector during a facility walkaround. This could allow union representatives to join OSHA compliance officers as they inspect your worksite, regardless of whether the union rep is your employee or whether your facility is a union shop.

How does the new final rule impact OSHA-approved State Plans?

OSHA "State Plan" states (click here and check out the final section for more information) will be required to adopt regulations that are identical to or "at least as effective" as OSHA's new final rule, unless they demonstrate that their existing requirements are at least as effective in protecting workers (in which case, no amendments will be required).

Has OSHA issued any guidance about the new final rule?

Yes. OSHA released its own series of frequently asked questions (OSHA FAQs) – but keep in mind that these FAQs do not necessarily reflect employer best practices. It's not clear if additional OSHA guidance is forthcoming.

Practical Details

Can third-party employee representatives participate in all aspects of the inspection?

No. A third-party representative's role is generally limited to:

- accompanying the OSHA inspector during the walkaround portion (and asking clarifying questions if needed); and
- attending the opening and closing conferences.

A third-party representative also may attend private employee interviews conducted by the OSHA inspector **if** the employee requests their presence.

Are employees required to follow a certain process when designating a representative?

No. There is no single process employees must follow when designating a walkaround representative.

How many employees are required to authorize a third-party representative?

Here's how the OSHA FAQs address this question: "No set number of employees are required to authorize an employee walkaround representative. It is not necessary for all, or even a majority, of employees to authorize the walkaround representative. However, in a workplace with more than one employee, more than one employee would be needed to authorize the walkaround representative."

Can OSHA designate a third-party employee representative on its own?

No. Third-party employee representatives cannot be authorized without a request or designation by employees.

Can OSHA provide advance notice of an inspection?

Generally, no. OSHA rules prohibit advance notice of inspections, except in in cases of apparent imminent danger, when the inspection must be after regular business hours (if management and worker representatives are not likely to be on-site unless they have advance notice), and when OSHA determines that a more complete inspection would result from advance notice.

It's not clear how an employee third-party representative could be on site and on time for an inspection without receiving advanced notice, raising concerns about OSHA tipping them off.

How will OSHA inspectors determine whether "good cause" shows that a third-party employee representative is "reasonably necessary" to conducting the workplace inspection?

Under the new final rule, this determination will be based on the third party's "relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills." OSHA guidance elaborates on this point but is also somewhat vague. According to the OSHA FAQs, inspectors have discretion to make this determination and to do so they might:

- inquire about the representative's "familiarity with the equipment, machinery, work processes, industry, consensus standards or hazards that are present in the workplace, and any specialized safety and health expertise" as well as their "language or communication skills that will facilitate the engagement of the employees"; and
- speak with employees and their designated representatives to determine whether the representative is reasonably necessary – meaning that they will make a "positive contribution" to a thorough and effective inspection (but in all cases the third party must "aid" the inspection).

What are the labor relations issues employers need to be able to address?

If a union representative shows up at your facility to participate in an OSHA inspection, rest assured this is just one part of an extended organizing plan. The plan is likely to include safety complaints from employees and even refusals to work based on safety concerns. For the most part, these actions are protected. To prevent inadvertent legal issues and operational disruptions, you need to train all levels of management on how to deal with protected, concerted activity. If applicable, it will also be important to make sure your facility managers understand how to lawfully and effectively use on-site security services that they might need if employees refuse to work due to safety issues.

Also, many issues related to workplace safety can be mitigated through the lawful use of a safety committee. In fact, safety committees can provide effective options to counter the outside use of third parties during an OSHA inspection. If your operations do not currently use a safety committee, you should consult labor law counsel to determine if it is an option for your operations.

Employer Rights

Can you challenge an OSHA inspector's decision to approve a third-party employee representative?

The new final rule is silent on this question. You may object to a representative by raising your concerns with the inspector, who will decide how to resolve the dispute. Beyond that, OSHA rules do not provide employers with any clear path of recourse. However, you can refuse requests for third parties to accompany OSHA during a facility walkaround, as further discussed below.

Does the new rule allow OSHA to inspect worksites without your consent?

No, unless the agency has a warrant. Employers' Fourth Amendment and state property rights entitle you to control how OSHA accesses company property and the areas covered during an

inspection unless the agency has a warrant. This has not changed under the new rule.

Can you refuse requests for third parties to accompany OSHA?

Yes. You have the Fourth Amendment right to refuse a walkaround inspection on any basis and require OSHA to get a warrant to conduct its inspection. You may decide as a matter of policy to refuse requests for third parties to accompany OSHA. One option is to advise the OSHA inspector that they may conduct their inspection, but you are choosing to deny entry to any third party.

What are the top reasons why you may want to refuse entry to a third-party representative?

- You have Fourth Amendment and state property rights that enable you to control who comes onto their premises.
- You may want to consider refusing entry if OSHA shows up with a third party who was not first selected by employees or if the OSHA inspector is unable to justify why third-party representation is reasonably necessary.
- You may want to consider refusing entry if the third party hasn't been trained regarding hazards at the site.
- You may want to consider refusing entry if doing so could jeopardize the confidentiality of your trade secrets or confidential business information.

Are there any employer penalties for denying access to third-party representatives?

Generally, no. There is no citation for refusing to allow a third party on-site when OSHA does not have a warrant. But OSHA may treat this as a "refusal of entry" and seek a warrant. If you refuse a warrant, especially after a court order, you could be subject to court sanctions. Results could vary among different courts.

Are there any risks to refusing requests for third parties to accompany OSHA?

Yes. Seek legal counsel to decide if refusing entry is the right option for you.

Can an employer require a walkaround representative to sign a confidentiality agreement?

Yes. Employers are within their rights to require employer representatives to sign reasonable confidentiality agreements, provided that such agreements are consistent with those required of other visitors at the worksite.

Employer Action Plan

What information should you obtain before an OSHA inspector begins a walkaround with a third-party representative?

You should ask the OSHA inspector:

- if employees designated the third-party representative;
- what relevant knowledge, skills, experience with hazards or workplace conditions, or language or communications the third party possesses; and
- why the third party is reasonably necessary to conduct an effective and thorough physical inspection of the workplace.

What should you do if you want to deny access to a third-party representative?

As mentioned above, you should seek legal counsel before refusing entry to third-party representatives.

How can you prepare for labor relations issues stemming from the new rule?

Train all levels of management on how to deal with protected, concerted activity related to union representatives joining an OSHA inspection. If applicable, you must also make sure your facilities understand how to lawfully and effectively use on-site security services that they might need if employees refuse to work due to safety issues. In addition, you should consult labor law counsel regarding using a safety committee for your operations.

What else can you do to prepare for the new rule to take effect?

You can follow our 7-Step Survival Guide to prepare for the new rule.

What's Next?

Will the rule be challenged? (Answer updated on May 22)

Yes. In fact, a coalition of business groups — including the U.S. Chamber of Commerce and the National Association of Manufacturers – filed a lawsuit in a Texas federal court on May 21 claiming that OSHA exceeded its authority. "Nothing in the OSH Act … authorizes a parade of non-employee third parties to trample through an employer's property, and creating such a right of access raises serious constitutional concerns," according to the complaint. It's important to note, however, that the walkaround rule remains on track to take effect on May 31 unless a court decides to halt it.

Conclusion

You should understand your rights if OSHA arrives at your worksite and have a plan before you are asked to allow a non-employee to accompany an inspector at your worksite. If you have any questions, contact the authors of this Insight, your Fisher Phillips attorney, or any member of our Workplace Safety Practice Group or Labor Relations Practice Group. Make sure you are

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Workers' Compensation Counsel Report
October 15, 2025

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BWC POLICY UPDATES

Changes to Elective Coverage and Cancellation of Elective Coverage

- On September 4, 2025, the BWC revised its Elective Coverage and Cancellation of Workers' Compensation Coverage policies.
- Elective coverage is not effective until notice has been filed, and mandatory payment made. Additional premium must be paid by the due date on the invoice.
- Extenuating circumstances in section IV.F were revised.
    - Retroactive elective coverage will not be granted if BWC was not provided notice by the filing of a U-3 or U-3S.
    - If retroactive elective coverage is granted by a claim allowance, BWC will add elective coverage and assign payroll for the policy year of the claim.
    - The employer must file a U-3S to continue elective coverage for future policy years.
- Employers can cancel elective coverage by telephone.
- Cancellation by telephone requires verification and documentation by BWC staff.

New policy Substance Use Prevention and Recovery Program

- On July 1, 2025, BWC issued a new policy titled Substance Use Prevention and Recovery (SUPR) Program.
- Formerly known as the Drug-Free Safety Program, SUPR is BWC's voluntary safety program developed to address workplace use and misuse of alcohol and other drugs.
- SUPR is designed to help state-fund employers more effectively prevent on-the-job injuries and illnesses by integrating drug-free efforts into their overall workplace safety program and resources to assist with the implementation of a drug-free workplace.

Changes to Risk Management Essentials

- On June 3, 2025, BWC revised the Risk Management Essentials policy.
- The definition "sponsoring organization" was renamed "Risk Management Essentials sponsoring organization" and expanded to include entities such as TPAs and safety council sponsors.

New policy Religious Exemption

- On May 22, 2025, BWC issued a new policy called Religious Exemption.
- An employer who is a member and adherent of a religious sect may apply to BWC to be exempted from the payment of premiums and assessments for an individual employee who is also a member and adherent of a religious sect if the employee waives the right to receive workers' compensation benefits.
- The policy includes information on:
  - Religious exemption requirements
  - BWC processing
  - Employer premium, payroll, and reporting
  -

New policy Risk Management Essentials

On April 15, 2025, BWC issued a new policy called Risk Management Essentials.

- A three-year pilot program beginning July 1, 2025, that requires employers to complete safety and claims management training through a certified sponsoring organization to qualify for a bonus.
- An employer must participate in the Safety Council Rebate Program and be eligible for the Safety Council Rebate to qualify for the Risk Management Essentials bonus.
- The Risk Management Essentials bonus is 5% of the employer's premium for the program period up to a maximum of $25,000.
- The program is open to public and private employers who are not participating in Group-Experience Rating, Group-Retrospective Rating, Individual Retrospective Rating, or the Deductible Program.

REGULATORY ACTIONS (New Rules)

4123-6.01.2 Provisional treatment reimbursement approval - pilot program.

- This rule establishes a pilot program under which one or more managed care organizations within the workers' compensation system (MCOs) could authorize medical treatment reimbursement requests, without disclaimer, for the first 60 days from the initial allowance of an identified at-risk claim under the conditions specified in the rule.

- The rule is being amended to provide that the pilot may be implemented for a period not to exceed three years.

- Employers may experience increased administrative time associated with the more robust management of pilot claims and increase in return to modified work.

- Effective November 1, 2025.

4123-6-20.1 Access to medical documentation

- The purpose of this rule is to provide parties to a workers' compensation claim reasonable access to and reasonable charges for medical records necessary for the administration of the claim.

- Adds language to rule consistent with recently amended R.C. 4123.651 that medical information, records, and reports shall be related causally or historically to physical, psychological, or psychiatric injuries relevant to the claimant's workers' compensation claim.

- Effective November 1, 2025.

LEGISLATIVE ACTIONS (136th General Assembly)

S.B. 241 Regards specified workers' compensation employer appeals.

- Adds language to R.C. 4123.512 to impose a $50,000 penalty against an employer who appeals an award for compensation or benefits for cancer contracted by a firefighter in the course of hazardous duty under division (X) of section 4123.68 of the Revised Code if the employer loses the appeal.

- The employer is to pay the penalty to the claimant.

- Introduced on July 30, 2025.

- Pending before the Senate Financial Institutions, Insurance and Technology Committee.

H.B. 94 (Formally S.B. 96 and H.B. 273 during GA 135) Allow Employers to Post Certain Labor Law Notices on Internet

- During GA 135: Passed by the Senate on October 11, 2023. Bill introduced in the House as H.B. 273. Reported out of the House Commerce and Labor Committee on December 6, 2023.

- Reintroduced as H.B. 94 during GA 136. Passed by the House on March 26, 2025. Currently pending in front of the Senate Workforce Development Committee.

- Adds language to permit employers to post certain labor law required notices on the internet in a manner that is accessible to the employer's employees, or employees of contractors, or subcontractors.

- Applies to:
  - Employer's list of employed minors.
  - Wage and hour postings required by the Ohio Department of Commerce.
  - Postings required by the Ohio Civil Rights Commission.
  - Prevailing wage postings for public works projects.
  - Notice required for workers' compensation drug and alcohol testing.
  - Notice of workers' compensation policy coverage.
  - Any notice required by public employment risk reduction standards.

H.B. 80 Industrial Commission Appropriations for FY 2026-2027

- No substantive changes.

- Signed by Governor DeWine and became effective on June 27, 2025.

H.B. 81 Bureau of Workers' Compensation Appropriations for FY 2026-2027

- Approves payment for prosthetic devices from the surplus fund.

- Addresses workers' compensation claims filed by incarcerated inmates/workers.

- Corrects the reference to the changed section number in the code of federal regulations for controlled substances under the drug testing sections for impaired injured workers.

- Signed by Governor DeWine and became effective on June 27, 2025.

Former GA 135 H.B. 559 Worker's Comp-Emergency Workers' Psychiatric Conditions

- Not yet reintroduced in GA 136.

- Expands the definition of an "injury" to include when the claimant is a peace officer, firefighter, or emergency medical worker and is diagnosed with a psychiatric condition that has been received in the course of, and has arisen out of, the claimant's employment as a peace officer, firefighter, or emergency medical worker.

- Limits any entitlement of a claimant to compensation as a result of any order issued under this chapter to not more than one year after the date the compensation payments commence under division (H) of section 4123.511 of the Revised Code.

Former GA 134 H.B. 17 Addressing Workers' Compensation in Firefighter Cancer Claims

- Not yet reintroduced in GA 136.
- No change in status. Last heard March 10, 2021 before the House Insurance Committee during the 134th General Assembly.
- Proposed bill would require the BWC to charge compensation and benefits paid from the State Insurance Fund for workers' compensation claims involving firefighters disabled by cancer to the Surplus Fund Account.
- In a claim involving a firefighter disabled by cancer where the employer is self-insured, the bill proposes the compensation and benefits payable to the firefighter paid by the self-insured employer would be deducted from the paid compensation reported to the BWC.

Former GA 134 H.B. 676 Workers' Compensation Permanent Partial Disability Awards

- Not yet reintroduced in GA 136.
- No change in status. Referred to House Civil Justice Committee on May 18, 2022 during the 134th General Assembly.
- Requires permanent partial disability (PPD) compensation be paid in weekly installments. PPD and scheduled loss payments stop when the injured employee dies. Any installments due that occurred previous to death are payable to the spouse or dependents if there is no spouse. The bill specifies that scheduled loss compensation for permanent partial loss of vision is based on loss of vision after any corrective surgery or other corrections to vision.

JUDICIAL DECISIONS

Supreme Court of Ohio

***State ex rel. Prinkey v. Emerine's Towing, Inc.*, 2024-Ohio-5713 (December 9, 2024)**

On January 19, 2015, Paul Prinkey Jr., sustained a work-related injury while employed by Emerine's Towing, Inc. His workers' compensation claim was allowed for "myocardial infarction and substantial aggravation of pre-existing coronary artery disease" and "major depressive disorder, single episode." On February 4, 2019, Mr. Prinkey filed his first application for permanent total disability ("PTD") compensation. The Industrial Commission reviewed medical and psychological evaluations submitted by both Mr. Prinkey and the Commission. Mr. Prinkey's selected physicians opined that he was permanently and totally disabled due to his allowed conditions, while the Commission's physicians concluded that he had a 30% whole-person impairment and was capable of sedentary work. Similarly, Mr. Prinkey's psychologist found him permanently and totally disabled, while the Commission's psychologist assessed only a 3% impairment and stated that Mr. Prinkey was capable of working.

On January 15, 2020, a Staff Hearing Officer ("SHO") denied Mr. Prinkey's PTD application, relying on the Commission's medical reports and a vocational evaluation that found his nonmedical disability factors favored reemployment. On June 4, 2021, Mr. Prinkey filed a second PTD application, supported by updated reports from the same medical professionals. The physical evaluations remained consistent with prior opinions, but both psychological evaluations showed significant changes. Mr. Prinkey's psychologist increased his impairment rating to 30%, and the Commission's psychologist now found Mr. Prinkey incapable of work, assigning a 35% impairment — up from the previous 3%.

While Mr. Prinkey's second PTD application was pending, the General Assembly enacted R.C. 4123.58(G) via H.B. 75, effective September 28, 2021. The statute requires that a claimant present "evidence of new and changed circumstances" before the Commission may consider a subsequent PTD application for the same injury. On November 9, 2021, a different SHO denied Mr. Prinkey's second PTD application, finding that he failed to present evidence of new and changed circumstances and that the Commission lacked jurisdiction to consider the application. Mr. Prinkey's request for reconsideration was denied.

In April 2022, Mr. Prinkey filed a mandamus action in the Tenth District Court of Appeals, arguing that the Commission erred in applying R.C. 4123.58(G) retroactively and that the worsening of his psychological condition constituted new and changed circumstances. The Court referred the matter to a magistrate who found that the statute applied retroactively because it was a constitutionally permissible remedial provision. However, the magistrate recommended granting a limited writ of mandamus because

the SHO failed to cite the evidence relied upon or explain the reasoning for the decision, as required under *State ex rel. Noll v. Indus. Comm.*, 57 Ohio St.3d 203 (1991).

The Commission objected, arguing that the SHO had complied with *Noll* and that the decision was supported by "some evidence." The Tenth District overruled the objections and issued a limited writ returning the matter to the Commission for further proceedings. The Commission appealed raising the same issues that it argued in its objections to the magistrate's decision. On appeal, the Supreme Court of Ohio affirmed the Tenth District's judgment. The Court declined to address the retroactivity issue, noting that the Commission was not aggrieved by the finding that the retroactive application was constitutional. The Court also declined to consider Mr. Prinkey's argument that the retroactive application was erroneous, as he had not filed a cross-appeal.

The Supreme Court focused on whether the Commission's order complied with *Noll*. The Court found that the SHO failed to explain why the updated psychological evaluations — particularly the Commission's own psychologist's finding of a 35% impairment and incapacity to work — did not constitute new and changed circumstances. The SHO merely stated that the decision was based on a review of the prior order and the claim file, without identifying specific evidence relied upon or providing reasoning. Because the psychologists' reports documented a worsening of Mr. Prinkey's condition, the Commission could not have relied on the entire claim file to conclude that no new and changed circumstances existed. The Court held that the SHO's order failed to meet the requirements of *Noll* and that the Commission abused its discretion. Accordingly, the Supreme Court affirmed the judgment of the Tenth District Court of Appeals and ordered the matter returned to the Commission for further proceedings.

***State ex rel. Culver v. Indus. Comm.*, 2025-Ohio-1612 (May 7, 2025)**

On March 20, 2016, Kenneth Ray Jr., a security guard employed by TimkenSteel Corporation, died of asphyxiation after entering a sealed elevator-control room at a TimkenSteel facility. The room was pressurized to prevent contamination and was supplied with purified air via an air-handling unit equipped with a pulse-cleaning system. Unbeknownst to anyone, the system had malfunctioned and was continuously releasing nitrogen gas, displacing oxygen in the room. When Mr. Ray entered and the door closed behind him, the oxygen level was measured at only 4.7%, well below the safe threshold of 19.5%. TimkenSteel, a self-insuring employer, accepted the workers' compensation claim and awarded death benefits to Mr. Ray's widow, Sharmel Culver.

In January 2017, Ms. Culver filed a Violation of Specific Safety Requirement (VSSR) application, alleging that TimkenSteel violated several safety regulations, including those under Ohio Adm.Code 4123:1-5-17(F) (respiratory protection) and 4123:1-5-18(C) (control of air contaminants). She later withdrew claims under other provisions, and the VSSR hearing proceeded on these remaining two allegations. Ms. Culver

alleged that TimkenSteel failed to provide Mr. Ray with respiratory equipment approved for air contaminants and failed to minimize his exposure to air contaminants.

Notably, the Administrative Code did not define either "toxic" or "toxic gases," and "toxic" was removed from the definition of "air contaminants" roughly three months after the accident in this case. The new code now defines "hazardous concentrations (as applied to air contaminants) as "concentrations of air contaminants which are in excess of established occupational exposure limits." Admin.Code 4123:1-5-01(B)(74).

On January 13, 2022, a Staff Hearing Officer (SHO) denied the VSSR application, finding that nitrogen gas is not a "toxic gas" and therefore not an "air contaminant" under the applicable rules. The SHO relied on evidence presented by Ms. Culver's own expert witness, David Bizzak, PH.D., P.E., including industry literature stating that nitrogen is "nontoxic and largely inert," and that it is not a "poison in the traditional sense." The SHO noted the air we breath is roughly 78% nitrogen. The SHO concluded that nitrogen, while hazardous in high concentrations, is not toxic per se and therefore the cited safety regulations did not apply.

Ms. Culver filed a mandamus action in the Tenth District Court of Appeals, arguing that the SHO committed a legal error by failing to consider the toxicity of nitrogen in the specific concentration present in the control room. The magistrate recommended denying the writ, but the Tenth District agreed with Ms. Culver, holding that toxicity is relative to concentration and that nitrogen, while normally inert, became toxic in the context of Mr. Ray's death due to its displacement of oxygen. The Court granted a limited writ of mandamus, ordering the Commission to revisit the VSSR analysis. The Industrial Commission and TimkenSteel appealed to the Supreme Court of Ohio.

The Supreme Court reversed the Tenth District's judgment and denied the writ. The Court held that the SHO did not abuse her discretion by concluding that nitrogen gas was not a "toxic gas" under the applicable safety regulations. The Court emphasized that the version of the Ohio Administrative Code in effect at the time of Mr. Ray's death defined "air contaminants" as "hazardous concentrations of toxic gases," and that the term "toxic" was not defined in the code.

Applying the plain and ordinary meaning of "toxic," the Court found that nitrogen, while potentially hazardous in certain concentrations, is not inherently toxic or poisonous. The Court noted that nitrogen comprises approximately 78% of the air we breathe and that the expert testimony and literature submitted by Ms. Culver herself — including statements from the U.S. Chemical Safety Board — described nitrogen as "nontoxic" and "not a poison in the traditional sense." The Court rejected the Tenth District's reasoning that toxicity should be determined based on concentration, holding that such an interpretation would render the word "toxic" in the regulation meaningless.

The Court further explained that the presence of a hazardous concentration of a

gas does not automatically make it a "toxic gas" and that the Commission was entitled to rely on the evidence before it in concluding that nitrogen did not meet the regulatory definition. Because the Commission's decision was supported by "some evidence" and the applicable safety rules must be strictly construed in favor of the employer due to their punitive nature, the Court held that the Commission did not abuse its discretion. Accordingly, the Court reversed the Tenth District's judgment and denied the writ of mandamus.

***State ex rel. Byk v. Indus. Comm.*, 2025-Ohio-2044 (June 11, 2025)**

On August 20, 2012, Bohdanus Byk ("Decedent") sustained severe head injuries while employed by Republic Steel. Following surgery, Decedent remained in a persistent vegetative state for nearly three years until his death on May 3, 2015. His workers' compensation claim was allowed for multiple conditions, including multiple hematomas, "subarachnoid hemorrhage with significant traumatic brain injury status post-decompressive craniotomy with resultant persistent vegetative state," bowel and bladder dysfunction, and respiratory failure. Prior to his death, Decedent filed a motion for scheduled-loss compensation under R.C. 4123.57(B), seeking benefits for the loss of use of his bilateral upper and lower extremities.

On February 18, 2014, a District Hearing Officer ("DHO") granted Decedent's motion, relying on medical evidence that his vegetative state resulted in permanent loss of use of his arms and legs. However, on the same day, the Supreme Court of Ohio issued its decision in *State ex rel. Smith v. Indus. Comm.*, holding that scheduled-loss compensation is not available when the loss of function is due to brain injury rather than direct injury to the affected body part. Republic Steel appealed the DHO's order, and on April 8, 2014, a Staff Hearing Officer ("SHO") vacated the award, applying the reasoning from *Smith* and concluding that R.C. 4123.57(B) does not authorize compensation for loss of brain stem function. The Industrial Commission declined further appeal, making the SHO's decision final.

Decedent filed a mandamus action challenging the denial, but the case was dismissed following his death. His surviving spouse, Pin Cha Byk, was substituted as relator in a subsequent mandamus action, which was also dismissed on grounds that the claim abated upon Decedent's death and the estate lacked standing. In April 2016, while litigation was ongoing, Ms. Byk filed a new motion with the Commission seeking scheduled-loss compensation under R.C. 4123.57(B) and R.C. 4123.60 as Decedent's surviving spouse. A DHO denied the motion and an SHO affirmed that order. The Commission accepted Ms. Byk's appeal, but denied the request for scheduled-loss compensation, citing its 2014 final order and concluding that Decedent had no entitlement to scheduled-loss compensation at the time of his death. Therefore, no compensation was payable to his dependent under R.C. 4123.60.

Ms. Byk filed a mandamus action in the Tenth District Court of Appeals. The magistrate recommended the Court deny the write finding Ms. Byk had failed to

establish that the Commission had a clear legal duty to award scheduled-loss compensation when the record indicated that any loss of use of Decedent's bilateral upper and lower extremities was solely the result of his severe brain injury. The Tenth District agreed with the magistrate that Ms. Byk was not precluded from applying for scheduled-loss compensation but found the magistrate should not have adjudicated the substantive merits of Ms. Byk's scheduled-loss claim because the Commission had not yet done so. The Tenth District ordered the Commission to vacate its denial and issue a new order adjudicating the merits of her claim. The Commission and Republic Steel appealed to the Supreme Court of Ohio.

The Supreme Court reversed the Tenth District's judgment and denied the writ. The Court's analysis focused on the statutory language of R.C. 4123.60, which governs a dependent's right to claim compensation that a decedent might have been eligible to receive prior to death. The Court emphasized that the statute requires the dependent to establish that the decedent "would have been lawfully entitled to have applied for an award at the time of his death." The Court found that this threshold requirement was not met.

The Court explained that Decedent's claim for scheduled-loss compensation had already been adjudicated and denied in a final Commission order in 2014. Ms. Byk's 2016 motion sought compensation for the same loss of use previously denied. The Court held that there was no legal basis for Decedent to reapply for the same scheduled-loss compensation at the time of his death, and therefore Ms. Byk was not eligible under R.C. 4123.60. The Court noted that R.C. 4123.57(B) does not contain language authorizing refiling or subsequent applications for the same scheduled-loss claim once denied, unlike other provisions of R.C. 4123.57 which expressly allow refiling under certain conditions.

The Court also rejected Ms. Byk's argument that the Commission's continuing jurisdiction under R.C. 4123.52 allowed Decedent to reapply. The Court clarified that continuing jurisdiction is limited and may only be invoked under specific circumstances such as new and changed conditions, fraud, or clear mistake. No such basis was established in this case. Additionally, the Court addressed the doctrine of *res judicata*, which applies to Commission proceedings. The Court found that Ms. Byk failed to explain why Decedent would not have been barred from refiling a claim for the same scheduled-loss compensation previously denied.

Finally, the Court acknowledged that a dependent's claim under R.C. 4123.60 is distinct from the injured worker's claim and becomes independently actionable upon the worker's death. However, the Court emphasized that the dependent must still satisfy the statutory requirements. Because Ms. Byk failed to establish that Decedent was lawfully entitled to reapply for scheduled-loss compensation at the time of his death, the Commission had no legal duty to award compensation. The Supreme Court concluded that Ms. Byk had not demonstrated a clear legal right to scheduled-loss compensation under R.C. 4123.60 and that the Commission had no clear legal duty to grant the award.

Accordingly, the Court reversed the Tenth District's judgment and denied the writ of mandamus.

***State ex rel. Urban v. Wano Expiditing, Inc.*, 2025-Ohio-3009 (August 26, 2025)**

On February 2006, Randall Urban sustained a work-related injury while unloading packages as a delivery driver for Wano Expiditing, Inc. His workers' compensation claim was allowed for a combination of physical and psychological conditions, including herniated discs at L3-L4 and L4-L5, lumbar radiculopathy, left foot drop, facet joint disease at multiple levels, depressive disorder, and anxiety disorder. Despite undergoing four back surgeries, Mr. Urban continued to experience back and leg pain and did not return to work following the injury.

In April 2021, Mr. Urban filed an application for permanent-total-disability ("PTD") compensation. He submitted medical reports from both a physician and a psychiatrist, each concluding that Mr. Urban was incapable of engaging in sustained remunerative employment. At the Industrial Commission's request, Dr. Harvey Popovich conducted a physical evaluation and opined that Mr. Urban was capable of sedentary work, provided he could alternate between sitting and standing. Dr. Mark Babula conducted a psychological evaluation and found that Mr. Urban's concentration was intact and his psychological conditions did not prohibit him from completing many basic tasks, but he required a low-stress work environment and the ability to take breaks from coworkers, customers, or tasks when overwhelmed.

Mr. Urban also obtained a vocational consultant's report, which disagreed with the Commission's medical evaluations. The consultant concluded that Mr. Urban's physical and psychological limitations rendered him "100% totally unemployable," and that no reasonable employer would accommodate the restrictions outlined in Dr. Babula's report.

In November 2021, a Staff Hearing Officer ("SHO") denied Urban's PTD application. The SHO relied on the reports of Dr. Popovich and Dr. Babula and found that Mr. Urban retained the capacity to perform sedentary work with limitations. The SHO also considered non-medical factors, including Mr. Urban's age (46), education (high school diploma), and work history, concluding that these factors did not preclude his return to employment. The SHO noted that Mr. Urban maintained a driver's license and could drive short distances, and that retraining could help him reenter the workforce. The SHO concluded Mr. Urban had the physical capacity to return to sustained remunerative employment and was not permanently and totally disabled.

Mr. Urban filed a complaint for a writ of mandamus in the Tenth District Court of Appeals, arguing that the SHO failed to properly consider his psychological conditions in combination with his physical conditions, as required by Ohio Adm.Code 4121-3-34(D)(3)(i). That rule mandates that when a claimant retains physical ability to perform some work and has allowed psychiatric conditions, the adjudicator must consider

whether the combination of those conditions prevents the claimant from engaging in sustained remunerative employment.

The Tenth District initially denied the writ based on a magistrate's recommendation. However, in a split decision, the appellate panel sustained Mr. Urban's objections. The majority found that the SHO's summary of Dr. Babula's report omitted key psychological limitations — specifically, the need for breaks from tasks— and concluded that the SHO had not fully analyzed the combined impact of Mr. Urban's conditions. The Court emphasized that the SHO failed to cite Adm.Code 4121-3-34(D)(3)(i), did not mention the vocational consultant's report, and focused primarily on Mr. Urban's physical capacity. The Court issued a writ directing the Commission to vacate its order and issue a new one consistent with the rule. The Industrial Commission appealed to the Supreme Court of Ohio.'

The Supreme Court of Ohio reversed the Tenth District's judgment and denied the writ of mandamus. The Court held that the SHO had complied with Adm.Code 4121-3-34(D)(3)(i) by considering both physical and psychological conditions and relying on the reports of Dr. Popovich and Dr. Babula. The Court acknowledged that the SHO did not explicitly cite the rule or quote its language in the denial order. However, the Court found that the substance of the SHO's order demonstrated compliance. The SHO had identified Mr. Urban's allowed physical and psychological conditions, summarized the findings of Dr. Popovich's physical evaluation and Dr. Babula's psychological evaluation, and concluded that Mr. Urban retained the capacity to perform sedentary work with the limitations described in those reports. The Court emphasized that the SHO's reliance on both evaluations implicitly showed that she considered the combined impact of Mr. Urban's conditions, which satisfied the requirements of the rule.

The Supreme Court rejected the Tenth District's reasoning that the SHO failed to appreciate the full scope of Dr. Babula's psychological restrictions — particularly the need for breaks from tasks. The Court clarified that the administrative rule requires the adjudicator to "consider" the conditions, not to "identify" or "list" every limitation. The SHO's statement that Urban could work "with limitations contained in the doctors' reports" was deemed sufficient to incorporate all relevant restrictions, even those not explicitly summarized. The Court reaffirmed longstanding principles that the Commission is only required to specify the evidence relied upon and briefly explain its reasoning, citing *State ex rel. Noll v. Indus. Comm.* and *State ex rel. Lovell v. Indus. Comm.* to support the presumption of regularity and completeness in Commission proceedings.

The Court also addressed the Tenth District's criticism that the SHO failed to mention the vocational consultant's report, which concluded Mr. Urban was "100% totally unemployable." The Supreme Court held that the Commission is not required to list every piece of evidence considered, and the omission of the vocational report did not imply it was ignored. The SHO's reliance on the medical reports was sufficient to support the decision. Additionally, the Court clarified the interchangeable use of

"psychiatric" and "psychological" conditions. Although the administrative rule uses the term "psychiatric," the Court found no substantive difference in this context. Mr. Urban's depressive and anxiety disorders, treated by a psychiatrist, clearly fell within the scope of the rule.

Ultimately, the Supreme Court concluded that the SHO's order was adequately reasoned, supported by medical evidence, and consistent with administrative requirements. The Court found no abuse of discretion and reversed the Tenth District's judgment, denying Mr. Urban's request for a writ of mandamus.

***State ex rel. Prime Roof Solutions, Inc. v. Indus. Comm.*, 2025-Ohio-4399 (Sept. 23, 2025)**

On April 2018, Mauricio Rivera was injured when he fell nearly 18 feet through a skylight while working on a low-sloped metal roof for Prime Roof Solutions, Inc. Mr. Rivera was not wearing fall-protection gear at the time. And co-workers were contemporaneously installing fall-protection anchors at the job site when he fell. Mr. Rivera's workers' compensation claim was allowed for multiple injuries to his head, brain, facial bones, eyes, fingers, right shoulder, and ribs.

In January 2020, Rivera filed an application for a violation of specific safety requirements ("VSSR") under Ohio Administrative Code section 4123:1-3-03(J)(1), which mandates that employers provide fall-protection equipment to employees exposed to fall hazards. A staff hearing officer ("SHO") found that Prime Roof Solutions violated the rule by failing to provide usable fall-protection gear, as Mr. Rivera had no means to tie off due to the absence of installed anchors. The SHO concluded that Prime Roof Solutions' providing fall protection gear at the site was insufficient if the gear could not be used for its intended purpose.

Prime Roof Solutions appealed the SHO's decision to the Tenth District Court of Appeals arguing that Mr. Rivera was injured while helping install the fall-protection system and that compliance with the rule was impossible during the setup phase. The Court of Appeals denied Prime Roof Solutions' appeal finding that some evidence supported the SHO's conclusion that Mr. Rivera was not involved in anchor installation but was instead identifying roof leaks. The Court also noted that Prime Roof Solutions failed to establish the affirmative defense of "impossibility" as it failed to show that no alternative protective methods were available. Prime Roof Solutions appealed to the Supreme Court of Ohio.

On appeal, Prime Roof Solutions criticized the Industrial Commission's decision and the Tenth District's affirmance by arguing that the finding of a violation of Ohio Adm.Code 4123:1-3-03(J)(1) was illogical and legally flawed. Specifically, Prime Roof Solutions contended that Mr. Rivera fell while he and other crew members were in the process of installing the fall-protection system, making it impossible to comply with the rule requiring fall-protection gear before the system was in place. The company also

objected to the Tenth District's discussion of alternative safety methods, claiming it was speculative and unfair because those methods had not been raised during the administrative hearing.

The Supreme Court of Ohio explicitly declined to address Prime Roofing Solutions' argument that applying the rule to workers installing fall-protection systems would be illogical or impossible because those were not the facts upon which the Commission had based its decision. Instead, the Court rejected Prime Roof Solutions' argument as it was factually unsupported by the record. The Court stated that factual determinations in VSSR cases rest within the exclusive discretion of the Commission. And, the Court noted that the SHO had found that Mr. Rivera was not involved in installing the fall-protection system at the time of his fall. Instead, Mr. Rivera was on the roof identifying the locations of leaks which was an activity that did not necessitate his presence on the roof before the anchors were installed. The Court found that the SHO's factual determination was supported by some evidence, particularly the testimony of the foreman, who stated that Mr. Rivera and another crew member were on the roof to begin identifying leaks and planning repairs while he (the foreman) was installing the anchors. Because the SHO's factual finding was supported by some evidence, the Court held there was no abuse of discretion.

The Court also clarified that the references to alternative methods by Tenth District Court of Appeals were dicta and not essential to its decision. The Court further noted that Prime Roof Solutions bore the burden of proving its impossibility defense, including the absence of alternative protective measures, and concluded that Prime Roof Solutions had failed to meet its burden.

Tenth District Court of Appeals

State ex rel. Columbus Schools, Columbus Bd. of Edn. v. Mizer, 2025-Ohio-2234 (June 26, 2025)

On August 30, 2021, Julie Brookbank-Mizer, a speech therapist employed by Columbus Schools, sustained a work-related injury. Her workers' compensation claim was allowed for concussion without loss of consciousness, sprain of ligaments of the cervical spine, and sprain of ligaments of the thoracic spine. Ms. Brookbank-Mizer elected to receive "stretch pay," a payment structure allowing her to receive wages over a 12-month period for work performed during the 9-month school year. She was granted temporary total disability ("TTD") compensation beginning September 1, 2021, and her average weekly wage was calculated based on her bi-weekly stretch pay.

On May 23, 2022, Ms. Brookbank-Mizer submitted a request for continued TTD compensation, supported by a MEDCO-14 form from her treating physician, Dr. Brian Scheetz certifying disability through August 25, 2022. Columbus Schools objected, arguing that she was a 9-month employee who did not work during the summer and

therefore had no earnings to replace during that period. A District Hearing Officer ("DHO") terminated TTD compensation effective June 3, 2022, concluding that she was not eligible for TTD during the summer months because she was not scheduled to work and had no earnings to replace. A Staff Hearing Officer ("SHO") affirmed the termination, and the Industrial Commission refused further appeal.

Ms. Brookbank-Mizer filed a request for reconsideration. On January 21, 2023, the Commission vacated the SHO's order. The Commission found that the SHO's order contained clear mistakes of fact and law and erroneously applied R.C. 4123.56(F) to bar compensation. The Commission relied on the Supreme Court's decision in *State ex rel. Glenn v. Indus. Comm.*, 2009-Ohio-3627, which held that a teacher who elects stretch pay and does not receive wages during the summer is eligible for TTD compensation for that period if the injury prevented her from earning wages during the school year.

Columbus Schools filed a petition for writ of mandamus, arguing that Ms. Brookbank-Mizer had no intent to work during the summer and had not worked summer sessions in recent years. The school district also argued that the Commission improperly relied on *Glenn* and failed to apply the proximate cause standard under R.C. 4123.56(F). The matter was referred to a magistrate.

The magistrate recommended denying the writ. The magistrate reasoned that the relevant inquiry was not whether Ms. Brookbank-Mizer intended to work during the summer, but whether she suffered a wage loss during the summer months as a direct result of her injury. Because she was entitled to stretch pay for work performed during the school year and did not receive those deferred wages due to her injury, she was eligible for TTD compensation during the summer. The magistrate found that the Commission's reliance on *Glenn* was appropriate and that the employer's arguments based on voluntary abandonment were misplaced, especially in light of the General Assembly's directive in R.C. 4123.56(F) to supersede the doctrine of voluntary abandonment. The Commission objected to the magistrate's recommendation.

The Tenth District Court of Appeals adopted the magistrate's decision in full. The Court overruled all objections raised by Columbus Schools. First, the Court rejected the argument that Ms. Brookbank-Mizer's wage loss was due to personal choice, finding that the Commission had relied on medical evidence showing her inability to work due to the injury. Second, the Court rejected the argument that *State ex rel. Crim v. Ohio Bur. Of Workers' Comp.*, 2001-Ohio-1268, required analysis of intent to work during the summer, noting that *Crim* applied only to claims involving second jobs and that R.C. 4123.56(F) precluded reliance on voluntary abandonment. Third, the Court found that *Glenn* was directly applicable and supported the Commission's conclusion that Ms. Brookbank-Mizer was entitled to TTD compensation for the summer months because she had lost deferred wages due to her injury. Accordingly, the Court denied the petition for writ of mandamus because the Commission's order was supported by "some evidence," complied with the requirements of R.C. 4123.56(F), and did not constitute an abuse of discretion.

***State ex rel. Hudson v. City of Cleveland*, 2025-Ohio-2871 (August 14, 2025)**

On July 14, 2021, Sean Hudson, employed as an Arborist I by the City of Cleveland, was fatally injured while working at the Romanian Cultural Garden. Mr. Hudson was engaged in cutting down a six-foot-tall tree stump when the stump fell and pinned him to the ground. The circumstances surrounding the accident were disputed. Reports from EMS, police, and coworkers varied regarding whether a rope and log truck were used to hoist the stump prior to the accident. The Ohio Bureau of Workers' Compensation's Public Employment Risk Reduction Program (PERPP) investigated the incident and issued five citations, including one for exposing employees to struck-by and crush hazards. Mr. Hudson's widow, Latesha Hudson, filed a workers' compensation death claim which the BWC allowed.

On January 14, 2022, Ms. Hudson filed an application for an additional award based on a violation of a specific safety requirement ("VSSR"), alleging that the City of Cleveland violated Ohio Adm.Code 4123:1-3-07(F), which prohibits employees from passing under loads handled by power shovels, derricks, or hoists. On July 25, 2025, a Staff Hearing Officer ("SHO") denied the application, finding that the cited safety regulation did not apply to the circumstances of Mr. Hudson's death. The Commission concluded that there was insufficient evidence to establish that the log truck used at the scene qualified as a crane, hoist, or derrick, and that the rope was not proven to be attached to the tree stump prior to the accident. The Commission also found that the work performed by Mr. Hudson did not fall within the scope of construction activity as defined in Adm.Code 4123:1-3-01(A).

Ms. Hudson filed a request for reconsideration, which was denied, and subsequently filed a complaint for writ of mandamus in the Tenth District Court of Appeals. The matter was referred to a magistrate. The magistrate recommended denying the writ. The magistrate found that the Commission's decision was supported by "some evidence" and did not constitute an abuse of discretion. The magistrate emphasized that VSSR awards are penal in nature and must be strictly construed. The magistrate agreed with the Commission that the work performed by Mr. Hudson — tree stump removal — did not fall within the definition of "construction activity" under Adm.Code 4123:1-3-01(A). The regulation lists specific activities such as demolition, excavation, and erection of structures, none of which applied to Mr. Hudson's arborist duties. The magistrate noted that there was no evidence that the tree stump was being removed as part of a construction project.

Even assuming the work qualified as construction, the magistrate found insufficient evidence to support a violation of Adm.Code 4123:1-3-07(F). The record contained conflicting accounts of whether the log truck was used to hoist the stump prior to the accident. While EMS and police reports suggested a rope and crane may have been used, incident reports and testimony from the City's urban forestry manager indicated that the rope was used only after the accident to remove the stump from Mr.

Hudson. The magistrate concluded that the Commission had discretion to weigh this conflicting evidence and reasonably found that the equipment used did not qualify as a hoist, crane, or derrick under the regulation.

The Tenth District conducted an independent review of the record and overruled Ms. Hudson's sole objection. The Court adopted the magistrate's findings of fact and conclusions of law in full and denied the petition for writ of mandamus. The Court held that the Commission did not abuse its discretion in denying the VSSR application and that the record contained "some evidence" to support the Commission's decision. The Court emphasized that the Commission retains discretion to interpret and draw inferences from the evidence and that mandamus is not appropriate when the Commission's findings are supported by the record.

***State ex rel. Holderman v. Indus. Comm.*, 2025-Ohio-4553 (September 30, 2025)**

On June 1, 2022, Mr. Holderman was attached, shot, and killed by a prisoner he was guarding while working as a security officer with Merchant Security Services of Dayton Ohio, Inc. Mr. Holderman's daughter, Patricia Holderman, filed an application for funeral expenses and death benefits with the Ohio Bureau of Workers' Compensation ("BWC"). Ms. Holderman stated that, at the time of Mr. Holderman's death, Ms. Holderman and her two minor children lived at Mr. Holderman's home, with Mr. Holderman paying for the mortgage, utilities, cell phones, automobile insurance, and other household expenses. Ms. Holderman was 39 years old and had lived with Mr. Holderman for most of her life. Ms. Holderman worked at a school cafeteria and a friend's ice cream shop, but did not work from April 15, 2022, until the time of Mr. Holderman's death because she was recovering from a back surgery stemming from chronic back conditions that impacted her ability to perform certain physical movements such as lifting objects over 15 pounds. She also testified that Mr. Holderman had specifically promised to financially support her during her recovery. She resumed her position at the school cafeteria in August 2022. Ms. Holderman argued that she was entitled to a presumption of whole dependency under R.C. 4123.59 because her back surgery rendered her unable to work at the time of the decedent's death. Ms. Holderman urged the Commission to limit its view of her incapacity to the time of Mr. Holderman's death and argued that the Commission should consider her to be dependent because she financially relied on Mr. Holderman for years.

The BWC allowed Ms. Holderman's claim for funeral expenses but denied her claim for dependent benefits because she was able to work and earn her own money. Ms. Holderman appealed to the Industrial Commission. The Commission upheld the BWC's decision that Ms. Holderman did not qualify as wholly or partly dependent on Mr. Holderman under R.C. 4123.59 because Ms. Holderman did not establish that she was incapacitated from earning and that Mr. Holderman provided more than one half of her support or had been legally liable to support Ms. Holderman. The Commission went on to hold that Ms. Holderman qualified as a "prospective dependent" and granted her a lump sum award of $3,000 based on Mr. Holderman's promise to support her during her

post-surgical recovery, their shared living arrangement, and Mr. Holderman's generosity. Ms. Holderman appealed to the Tenth District Court of Appeals.

On appeal, Ms. Holderman, argued that the Commission used an improper standard to determine whether she was incapacitated from earning and that it did not properly consider the evidence of her disability. She further argued that the Commission conflated the standard for establishing a legal presumption of whole dependency with the standard for determining partial dependency based on the specific facts of the case.

The magistrate concluded that the Commission's decision regarding Ms. Holderman's capacity to earn was supported by the evidence of Ms. Holderman's work history. However, the magistrate agreed with Ms. Holderman that the Commission did not review her claim of partial dependency under the correct standard. Accordingly, the magistrate recommended that the Court deny Ms. Holderman's request for a writ of mandamus in part, grant the request in part, and return the case to the Commission for further proceedings. Ms. Holderman and the Commission objected to the magistrate's decision and requested review by the Court.

The Court overruled the objections and affirmed the magistrate's decision. The Court noted that, although there are only two enumerated subdivisions in R.C. 4123.59(D), the statutory provision creates at least four categories of people based on their relationship with the decedent at the time of death, and it creates different types of dependency, different burdens of proving dependency, and different benefit payment parameters for those categories of people. In sum, R.C. 4123.59(D) provides that: (1) certain spouses and children are presumed to be wholly dependent on the deceased employee, with weekly payments governed by R.C. 4123.59(B), (2) a live-in parent is presumed to be dependent at an unspecified level, with a minimum payment of $3,000, (3) a person who is a family member and a "surviving spouse, lineal descendant, ancestor, or brother or sister" is eligible to prove that they would have been prospectively dependent on the deceased employee, with a maximum payment of $3,000, and (4) a person who is a family member or a "surviving spouse, lineal descendant, ancestor, or brother or sister" is eligible to prove that they are partly or wholly dependent on the deceased employee, with weekly payments governed by R.C. 4123.59(B) or (C).

In response to Ms. Holderman's objections, the Court determined that whether Ms. Holderman is a partly dependent person and, if so, the extent to which she is partly dependent, is a question of fact for the Commission to determine and the Commission must determine the factual and legal issues in the first instance rather than having such issues determined in the first instance by the Court. Additionally, Ms. Holderman's claim that her congenital spinal conditions and associated physical limitations establish that she is physically incapacitated from earning is not supported by the plain meaning analysis of the phrase "incapacitated from earning." The Court noted that an incapacity to earn means an inability to earn money, and conversely that a person's actual earning

of money indicates that person is not incapacitated from earning. Finally, the Court concluded that although Ms. Holderman's proof of her congenital spinal condition was relevant to her claim that she was incapacitated from earning, the Commission chose to focus on the fact that Ms. Holderman engaged in actual sustained employment before and after Mr. Holderman's death.

In response to the Commission's objections, the Court disagreed with the Commission's argument that the case should not be remanded to the Commission because the Commission's finding of "prospectively dependent" in R.C. 4123.59 does not require the Commission to consider whether she is partly dependent-in-fact. The Court concluded that the Commission's argument fails because it does not account for the difference between "prospective dependency" and other types of dependency. The question of whole or partial dependency, whether presumed or in fact, looks at needs that existed at the time of the employee's death, where prospective dependency is based on circumstances that indicate future needs. And whether a person was dependent at the time of an employee's death is a different question from whether a person was likely to be dependent at a future point after the employee's death. The Court concluded that the Commission's decision that Ms. Holderman was not dependent in fact was not based on "some evidence" in the record, therefore, the matter should be remanded to the Commission to determine the issue of dependency in fact.

***State ex rel. Kaminski v. Indus. Comm*., 2025-Ohio-4663 (October 9, 2025)**

Wayne Kaminski was injured in March 2011 while employed by A.P. O'Horo Company. His workers' compensation claim was allowed for multiple physical and psychological conditions including: sprain lumbosacral; sprain of neck; sprain of left shoulder, closed acromion fracture, left shoulder; os acromial deformity, left shoulder, left bicipital tenosynovitis; adjustment disorder with depression; major depressive disorder, single episode, severe without psychotic features; substantial aggravation of preexisting left shoulder rotator cuff tendinosis; and adhesive capsulitis of left shoulder. Over the next five years, Mr. Kaminski underwent four surgical procedures and participated in vocational rehabilitation, ultimately returning to work in 2014 as a CNC operator. He remained employed until 2017, when he underwent a fourth surgery and was awarded temporary total disability ("TTD") benefits. In 2022, Mr. Kaminski was evaluated by Kenneth Gruenfeld, Psy.D., who opined that Mr. Kaminski was unable to return to work at his former position based on the allowed psychological conditions but was able to work four hours per day, two days per week.

In January 2023, Mr. Kaminski filed an application for permanent total disability ("PTD") compensation supported by medical opinions from Dr. Michael Weaver, D.C., and Dr. Robert Roerich, M.D., who opined that Mr. Kaminski was permanently and totally disabled. At the request of the Commission, Mr. Kaminski underwent independent medical evaluations by Dr. Richard Reichert, M.D., and Dr. Andrea Loucaides, Ph.D. Dr. Reichert found Mr. Kaminski was capable of sedentary work with further limitations related to limited use of his left arm and allowing his use of a sling.

Dr. Loucaides opined that Mr. Kaminski was "capable of working in some capacity" and "would do better working independently in a position with minimal social contact" and "completing simple tasks at his own pace." The Industrial Commission denied Mr. Kamiski's PTD application based on the opinions of Dr. Reichert and Dr. Loucaides that concluded Mr. Kaminski was capable of sedentary work with restrictions. Mr. Kaminski appealed to the Tenth District Court of Appeals.

On appeal, Mr. Kaminski argued that the Commission erred by failing to separately analyze Dr. Gruenfeld's report; by relying on Dr. Reichert's exertional classification without explaining how the restrictions aligned with sedentary work; by improperly considering vocational rehabilitation; and by failing to comply with *State ex rel. Noll v. Indus. Comm.*

The Court disagreed with Mr. Kaminski's arguments. The Court noted that the Commission was not required to list or separately analyze Dr. Gruenfeld's report because it did not rely on his report to deny Mr. Kaminski's PTD application. The Court pointed out that Dr. Gruenfeld did not opine that Mr. Kaminski was permanently and totally disabled and emphasized that the Commission properly identified the reports of Dr. Reichert and Dr. Loucaides as the evidence it relied upon in reaching its decision.

The Court also found that Dr. Reichert's report, which concluded that Mr. Kaminski was capable of sedentary work with limited use of his left arm and the use of a sling, was not internally inconsistent and that the Commission properly considered the specific restrictions in concluding Mr. Kaminski was capable of sedentary work. The Court distinguished the facts of Mr. Kaminski's PTD application from *State ex rel. Hobart v. Indus. Comm*. In *Hobart*, the Commission improperly relied on a physician's exertional classification that conflicted with the specific restrictions imposed by the physician. In contrast to *Hobart*, Mr. Kaminski's restrictions did not involve his dominant arm, and the Commission properly considered his limitations in its analysis.

The Court also found that the Commission did not abuse its discretion in considering Mr. Kaminski's prior vocational rehabilitation efforts and nonmedical disability factors, including his age, education, and work history. The Court concluded that the Commission's vocational rehabilitation findings were supported by evidence in the record, including documentation of Mr. Kaminski's training in CNC programming and operation. Further, the Court noted that Mr. Kaminski failed to provide evidence to rebut the presumption of regularity in the Commission's proceedings such as a hearing transcript. Finally, the Court determined that the Commission complied with *Noll* by identifying the evidence it relied on in rendering its decision and explaining its reasoning. Accordingly, the Court found no abuse of discretion and denied Mr. Kaminski's appeal.

Bureau of Workers' Compensation

SUBSTANCE USE PREVENTION AND RECOVERY PROGRAM (SUPR)

Ana Cammarata, CSP, OSHA authorized outreach trainer
Bilingual Business Consultant
Employer Services
Ana.c.12@bwc.ohio.gov
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Ohio Bureau of Workers' Compensation

SUBSTANCE USE PREVENTION AND RECOVERY PROGRAM (SUPR)

- Program introduced on July 1st, 2025
- Program merges three popular programs with overlapping benefits and requirements:
  - Drug-Free Safety Program,
  - Drug-Free Safety Program Grants,
  - Substance Use Recovery and Workplace Safety Program (grant).

CHANGES IN THE NEW SUPR PROGRAM

- Most participants will automatically be eligible for reimbursement grants.
- Enrollment has moved to year-round with the ability to earn a pro rata bonus.
- The following past (DFWP) requirements have been eliminated:
  - Filing of the Safety Management Self-Assessment (SH-26)
  - Filing of the Safety Action Plan (DFSP-5)
  - Online filing of Accident Report (DFSP-1) only required for lost-time claims.
- An online portal is being developed to report on program requirement completion and request reimbursement of activities in one place.

ELIGIBILITY -SUPR

- Be current on all BWC premium payments
- Be in an “active” policy status (not lapsed or inactive)
- Have reported actual payroll and paid any premium due for previous year
- Have no more than 40 days of lapsed workers’ compensation coverage in the last 12 months (Advanced and Basic levels only)

Who is not eligible?

- State agencies
- Self-insured employers (eligible for comparable level only)
- AEOs and PEOs unless all their clients have enrolled and meet all SUPR requirements

PARTICIPATION LEVELS & BONUSES

- **Basic Level :** 4% bonus based on premium payment
- **Advanced Level :** 7% bonus based on premium payment
- **Comparable program :** Inclusion on list of approved state construction contractors.
- **SUPR Reimbursements only:** Reimbursement of a portion of costs associated with the program.

Bureau of Workers' Compensation

Substance Use Recovery and Workplace Safety Program

Reimbursable Expenses Chart

Employer policy development and/or review, including any external legal review of the policy	Actual cost up to an annual maximum of $2,000 for policy development or review.
Required documentation:	• Invoice from vendor • Proof of payment to vendor • Copy of old and new policies
Employee and supervisor training	Actual cost up to an annual maximum of $5,000 for employee and supervisor training.
Required documentation:	• Invoice from vendor • Training curriculum • Proof of attendance • Proof of payment to vendor
Drug testing	Actual cost up to a maximum of $100 for an individual lab drug test, including pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing. Total annual maximum of $1,500.
Required documentation:	• Invoice from vendor • Proof of payment to vendor • Copy of workplace substance use policy or second chance agreement

Reimbursement shall be the actual cost up to the amount specified for each of the above properly documented services, subject to the parameters contained within the Substance Use Recovery and Workplace Safety policy.

BWC reserves the right to audit employer use of program funds received. Reimbursement requests must be submitted within one year from date services were provided to the employer.

Annual cost calculated based on the state's fiscal year (July 1 – June 30).

Program for reimbursement only: The employer must keep the documentation provided to BWC to support the reimbursement request for three years.

BENEFITS OF THE SUPR PROGRAM

- Simplification of paperwork & requirements.
- Bonuses for participating at Basic or Advanced level.
- Reimbursements for employee and supervisor training, drug-free workplace policy development and drug testing.
- Participation in SUPR also provides employers access to BWC's Better You, Better Ohio program.

BENEFITS OF THE SUPR PROGRAM

- Having a drug free workplace program help to address workplace use and misuse of alcohol and other drugs.
- Help to prevent on-the-job-injuries by incorporating drug free efforts into the overall workplace injury and illnesses prevention program. Crucial for the construction & service industries.
- May help to reduce severity of injuries (of more than 7 days lost work time).
- Deterrent effect: Program may help employers with hiring process and setting clear expectations for a safe work environment.

Resources

9% of young US employees use alcohol, drugs at work, study finds
https://news.osu.edu/9-of-young-us-employees-use-alcohol-drugs-at-work-study-finds/

Ohio Recovery Friendly Workplace
https://recoveryohio.gov/home/news-and-events/all-news/ohio-recovery-friendly-workplace

2023- Ohio Unintentional Drug Overdose Report
2023+Unintentional+Drug+Overdose+Annual+Report_FINAL.pdf

State contractors Comparable program guidelines
https://info.bwc.ohio.gov/for-employers/rules-and-policies/state-construction-contractor-drug-free-guidelines

SUPR at a glace
SUPR at a glance | Ohio Bureau of Workers' Compensation

Safety & Workers Comp Committee

OSHA Updates & Navigating Government Shutdown

OCTOBER 15, 2025

Nicholas W. Scala

Chair, MSHA Practice Group

Partner, OSHA Practice Group

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CONN MACIEL CAREY

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Nick Scala is a Chair of the national MSHA • Workplace Safety Practice at **Conn Maciel Carey LLP** and a Partner in the firm's OSHA • Workplace Safety Practice. He focuses on all aspects of occupational and mine safety & health law:

- Represents employers in inspections, investigations and enforcement actions involving OSHA & MSHA
- Manages investigations of serious workplace accidents and discrimination/whistleblower complaints
- Handles all aspects of OSHA & MSHA litigation and rulemaking advocacy
- Provides compliance advise to employers by administering privileged audits and investigations
- Chambers USA ranked OSHA/MSHA attorney and Certified Mine Safety Professional

OSHA Leadership Update

OSHA Under a 2nd Trump Administration

- New Policymakers and Staff = New Enforcement and Rulemaking Philosophy
- Expect rebalancing of Enforcement-Heavy and Compliance Assistance / Cooperative Philosophy
- Possibly revisit Field Operations Manual and Enforcement Policies that inflated civil penalties (e.g., expanded Per-Instance citations and SVEP)

Senate Expedites Trump Nominees

CONN MACIEL CAREY

Senate Republicans turn to 'nuclear option' to speed confirmation of Trump nominees

By Barbara Sprunt

Senate Majority Leader John Thune, R-S.D., speaks to the media following a Senate policy luncheon at the U.S. Capitol on Tuesday. Senate Republicans have voted to change the chamber's rules in order to speed confirmation of President Trump's nominees.
Kevin Dietsch / Getty Images

Senate Republicans have voted to change the rules to make it easier to confirm President Trump's nominees, allowing the chamber to confirm certain nominees in groups rather than by individual vote.

The vote Thursday comes after months of Republican lawmakers criticizing their Democratic counterparts for dragging out the confirmation process, one of the few elements of power the minority party has in GOP-unified government.

As Senate goes 'nuclear,' dozens of Trump nominees are confirmed

By Patricia Zengerle

September 18, 2025 6:39 PM EDT · Updated 13 hours ago

The U.S. Capitol Building's dome is seen in Washington, U.S., September 9, 2025. REUTERS/Elizabeth Frantz/ File Photo Purchase Licensing Rights

Summary Companies

- High-profile nominees Guilfoyle, Gingrich become ambassadors
- Vote along party lines, as partisan divisions deepen
- Federal judges and heads of cabinet agencies not affected

Assistant Secretary of Labor for OSHA - Nominee

CONN MACIEL CAREY

- 2/12/25 - Trump nominated **David Keeling** for **Assistant Sec'y of Labor for OSHA**
- Began 36-year career at UPS in 1985 as a union package handler, climbing ranks to VP of Global Health and Safety (2018 - 2021)
- Dir. of Global Road & Transportation Safety at Amazon (2021 – 2023)
- Senate HELP Committee **Confirmation Hearing – 6/5/25**
  - Committed to finalize Workplace Violence and Heat Illness standards
  - Challenging paths ahead for Emergency Response standard and NIOSH
  - Greater collaboration, expanded VPP, and engaging at risk employers
- 10/3/25 - **Confirmed by batch vote in the Senate**

Staffing and Budget at OSHA

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2016-2021 Trump

- 1st time in OSHA's history, OSHA did not have a Senate-approved Assistant Sec'y for OSHA for a full presidential term
- By the end of his 1st term, OSHA had the fewest CSHOs in the agency's history and a slew of vacant leadership roles

Biden's OSHA

- Prioritized filling political leadership positions at OSHA
- Immediately installed a Deputy Assistant Sec'y (Day 1)
- Confirmed a Sec'y and Solicitor of Labor in Year 1
- Confirmed an Assistant Sec'y of Labor for OSHA in 6 mos.
- Regrew CSHO ranks and filled vacant management roles

2025 - Under Trump

- Already-confirmed Labor Secretary
- Immediately installed a Dep. Ass't Sec'y
- Confirmed OSHA Head 3½ yrs quicker
- Day 1 EOs affecting OSHA staffing:
  - Halt federal hiring, except military
  - Return to work in-person full time
  - Office closures / Shutter Area Offices
  - "Fork in the Road" severance email

OSHA Budgeting and Priorities

OSHA Under a 2nd Trump Administration

- New Policymakers and Staff = New Enforcement and Rulemaking Philosophy

- Expect rebalancing of Enforcement-Heavy and Compliance Assistance / Cooperative Philosophy

- Possibly revisit Field Operations Manual and Enforcement Policies that inflated civil penalties (e.g., expanded Per-Instance citations and SVEP)

Forecasting the FY ‘26 Budget

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- White House proposes $582M
  - $50M reduction from FY ’25
  - Same as FY ‘20
  - $582M in FY ‘20 is equivalent to $715M today
- House Appropriations Committee approved $582M by vote of 35-28.
- Senate Appropriations Committee approved $632M
- Let the negotiations begin

Doing Less with Less

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Area	Reduction
Standards (Rulemaking)	24%
Enforcement	9.7%
Susan Harwood Training Grants	100% (eliminated)
Enforcement staffing	13%

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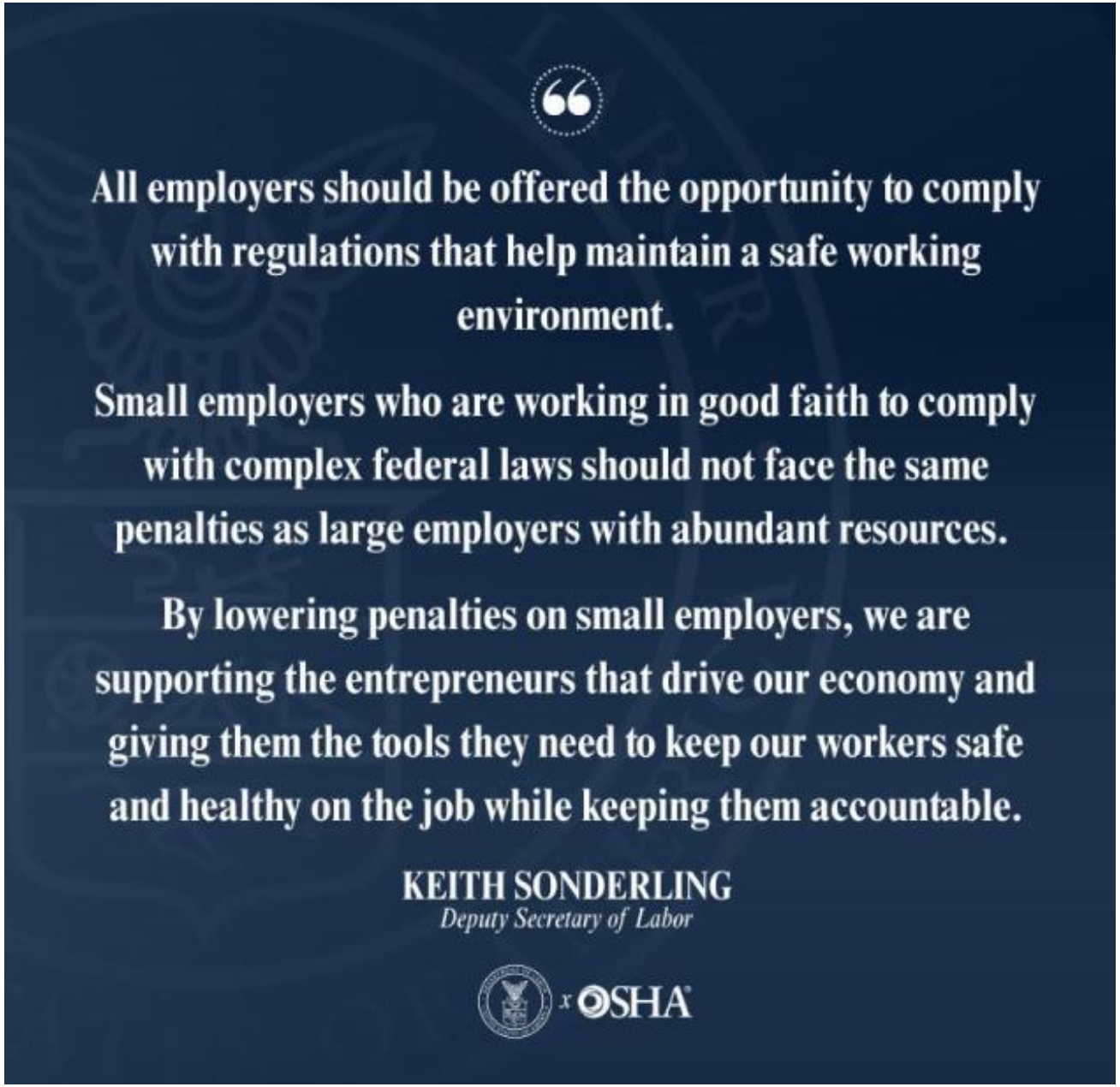
Small Employers. Smaller Fines.

- Up to 70 % off if < 25 employees (up from 10)
- Up to 15 % off for quick fixes
- Up to 20% off if never inspected or no serious, willful, repeat or FTA citations in last 5 yrs



Proactive Enforcement Targeting

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- Site Specific Targeting
- Combustible Dust NEP
- Amputations NEP (LOTO and Machine Guarding)
- Heat Illness NEP
- Primary Metals, Lead, Silica, and Hex Chrome NEPs
- Falls NEP
- Chem Facility/Petroleum Refinery PSM NEP
- Trenching/Excavations NEP
- Warehousing and High Injury Rate Retail NEP
- REPs/LEPs – Food Manufacturing, Grain, Forklifts, Etc.

Increase in National, Regional, and Local Enforcement Emphasis Programs (≈52% of inspections in FY24)

Higher Max Penalties *BUT* Higher Penalty Discounts Available

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Classification	Historical	2016 (78% Increase)	2025 (2.5% Increase)
Other-than-Serious	$7,000	$12,471	$16,550
Serious	$7,000	$12,471	$16,550
Willful	$70,000	$124,709	$165,514
Repeat	$70,000	$124,709	$165,514
Failure to Abate	$7,000 per day	$12,471 per day	$16,550 per day

New Increased Penalty Discounts

- Up to 70% off if < 25 employees (up from 10)
- Up to 15 % off for quick fixes
- Up to 20% off if no serious, willful, repeat citations in 5 yrs

OSHA Enforcement Press Release
(aka "Regulation by Shaming")

CONN MACIEL CAREY

OSHA News Releases – Enforcement

January 2025

- **01/16/2025** - OSHA News Release - Atlanta Region - US Department of Labor finds storm pipe cleaning, maintenance employer ... worksite
- **01/14/2025** - OSHA Trade Release - US Department of Labor announces adjusted OSHA civil penalty amounts
- **01/14/2025** - OSHA News Release - Philadelphia Region - US Department of Labor cites Pennsylvania soap, de... chemical release

December 2024

- **12/31/2024** - OSHA News Brief - Owner of Medford construction company sentenced to 18 months for tax crir...
- **12/31/2024** - OSHA News Release - Chicago Region - Zion contractor again found ignoring protections to prev... ...in new fines
- **12/27/2024** - OSHA News Release - Atlanta Region - US Department of Labor finds Louisiana contractor could...
- **12/26/2024** - OSHA News Release - Boston Region - Department of Labor finds Glenburn contractor ignored r... ...e
- **12/26/2024** - OSHA News Release - Dallas Region - US Department of Labor investigation finds Frisco contract...
- **12/26/2024** - OSHA News Release - Birmingham Region - US Department of Labor finds worker electrocution tied to Alabama contr...

Obama/Biden
≈40 Press Releases per Month

Trump/Pence
≈10 Press Releases per Month

Biden/Harris
≈20 Press Release per Month

They're Back…

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OSHA News Releases – August 2025

- **08/28/2025 -** OSHA News Release - Atlanta Region - US Department of Labor, MEJA Construction partner to promote safety, health during construction projects in Henry, Clayton counties
- **08/26/2025 -** OSHA Trade Release - US Department of Labor renews national alliance to enhance worker safety in waste and recycling industry
- **08/13/2025 -** OSHA Trade Release - US Department of Labor renews Pennsylvania OSHA Consultation, Upper Bucks County Technical School alliance promoting young worker safety
- **08/11/2025 -** OSHA Regional News Brief - New York City Region - US Labor Department cites New Jersey commercial laundry company after worker injured at Kearny facility
- **08/07/2025 -** OSHA Regional News Brief - San Francisco Region - US Department of Labor recognizes Marine Corps Air Station Camp Pendleton as a workplace safety 'Star'
- **08/06/2025 -** OSHA Trade Release - OSHA hosts Safe + Sound Week, August 11-17, promoting workplace safety
- **08/06/2025 -** OSHA Regional News Brief - Dallas Region - US Department of Labor orders railroad company to reinstate worker, pay over $300K in back wages, damages, attorney's fees

August 11, 2025

US Labor Department cites New Jersey commercial laundry company after worker injured at Kearny facility

KEARNY, NJ – The U.S. Department of Labor cited a commercial laundry company for alleged workplace safety hazards after an employee injury at its Kearny facility.

The department's Occupational Safety and Health Administration opened an investigation of KN 26671 LLC, operating as Cooperative Laundry, following a referral from the Kearny Police Department. OSHA inspectors determined that on Jan. 18, 2025, a worker suffered serious injuries while performing maintenance on an industrial dryer.

The agency cited Cooperative Laundry for three willful and nine serious violations for failing to evaluate permit required confined spaces, notify employees of the confined spaces, develop a permit confined space program, and utilize lockout/tagout procedures to prevent accidental machine startup.

The employer was also cited for neglecting to provide training to authorized employees, exposi workers to unguarded vertical and inclined belts, and failing to conduct periodic inspections. OSHA has proposed $252,994 in penalties.

The company has 15 business days from receipt of their citations and penalties to comply, request an informal conference with OSHA, or contest the findings before the independent Occupational Safety and Health Review Commission.

OSHA During Government Shutdown

CONN MACIEL CAREY

Fed Govt Shutdown Impact

- Began October 1, 2025 (14 days, and counting)
  - Most recently occurred in 2019 (34 days)
  - Historically, there have been 10 “shutdowns”
- Non-essential employees of the federal government are furloughed or temporarily laid off
  - Much discussion in Washington, D.C. about permanent layoffs
- Essential personnel continue to work, but many will not be paid until the shutdown ends

OSHA During the Shutdown

- What ***won't*** OSHA do during a shutdown?
- Programmed inspections
- Compliance assistance and outreach
- Training and technical support
- Rulemaking and deregulatory efforts
- Non-emergency whistleblower investigations
- Informal conferences previously scheduled or for citations issued during shutdown
  - **File your Notices of Contest (not paused)**

OSHA During the Shutdown

CONN MACIEL CAREY

- What ***will*** OSHA do during a shutdown?
- Inspecting imminent danger situations
- Investigating workplace fatalities and catastrophes and complaints that establish employees may be exposed to hazardous conditions presenting a high risk of death or serious physical harm
- Follow-up inspections of unabated high-hazard citations may still take place.
- Finalize open inspections prior to end of 6-month period – for cases involving employee exposure to hazardous conditions presenting a high risk of death or serious physical harm
- Review and refer whistleblower complaints involving imminent threats to life or property and requiring an immediate response

OSHA Rulemaking Review and Forecast

New Final Rules Under Biden's OSHA

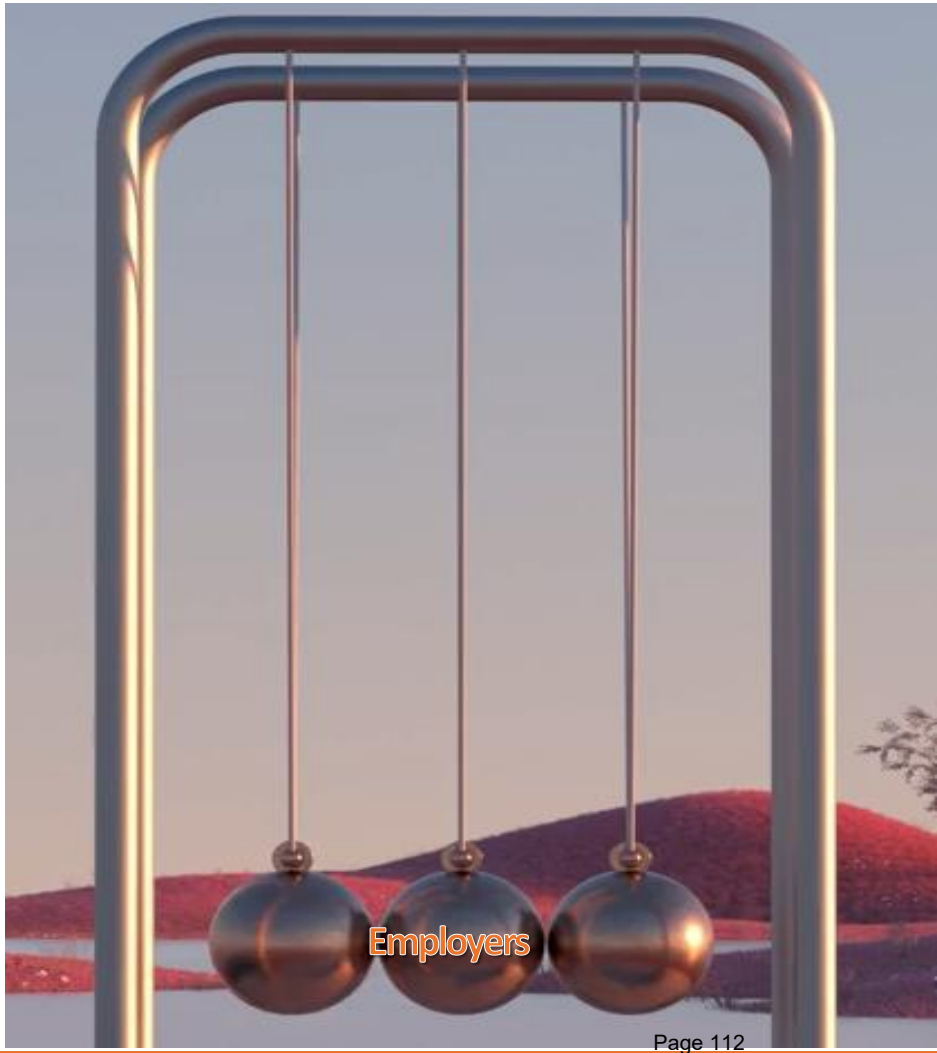
CONN MACIEL CAREY

Worker Walkaround Rule

- 3rd parties (e.g., plaintiffs' attorney/union) to access private workplaces to participate in OSHA inspections
- Trump may rescind by rulemaking or stop defending the legal challenge

Expanded E-Recordkeeping Rule

- Restored Obama-era requirements for certain larger employers to also submit 301-level data
- Trump dialed this back in his 1st term (likely again)



Biden's OSHA – Top 3 Incomplete Rulemakings

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1. **Heat Illness Prevention in Indoor and Outdoor Workplaces**
2. Emergency Response
3. Process Safety Management Reform

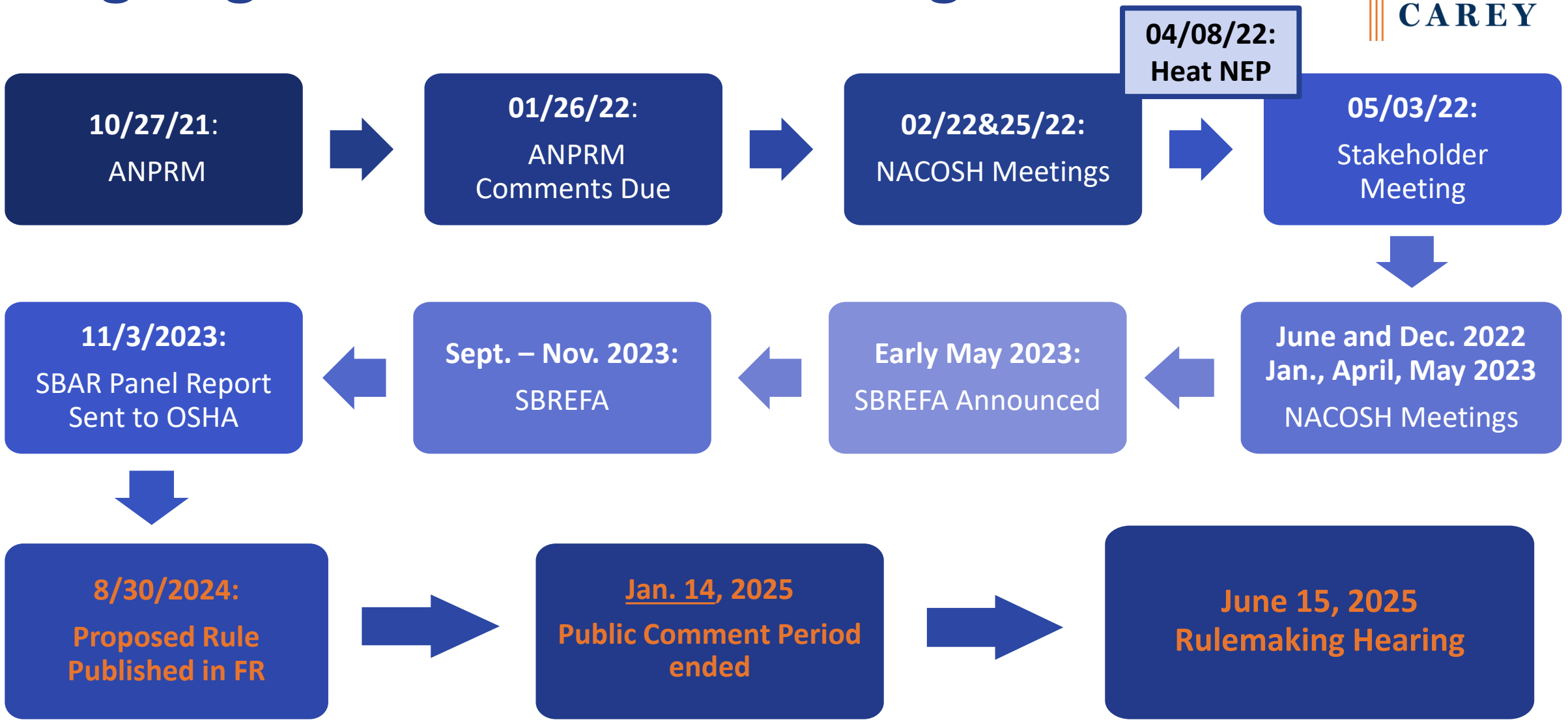
OFFICE of INFORMATION and REGULATORY AFFAIRS
OFFICE of MANAGEMENT and BUDGET
EXECUTIVE OFFICE of the PRESIDENT
Reginfo.gov

Agency Rule List - Fall 2023

Department of Labor

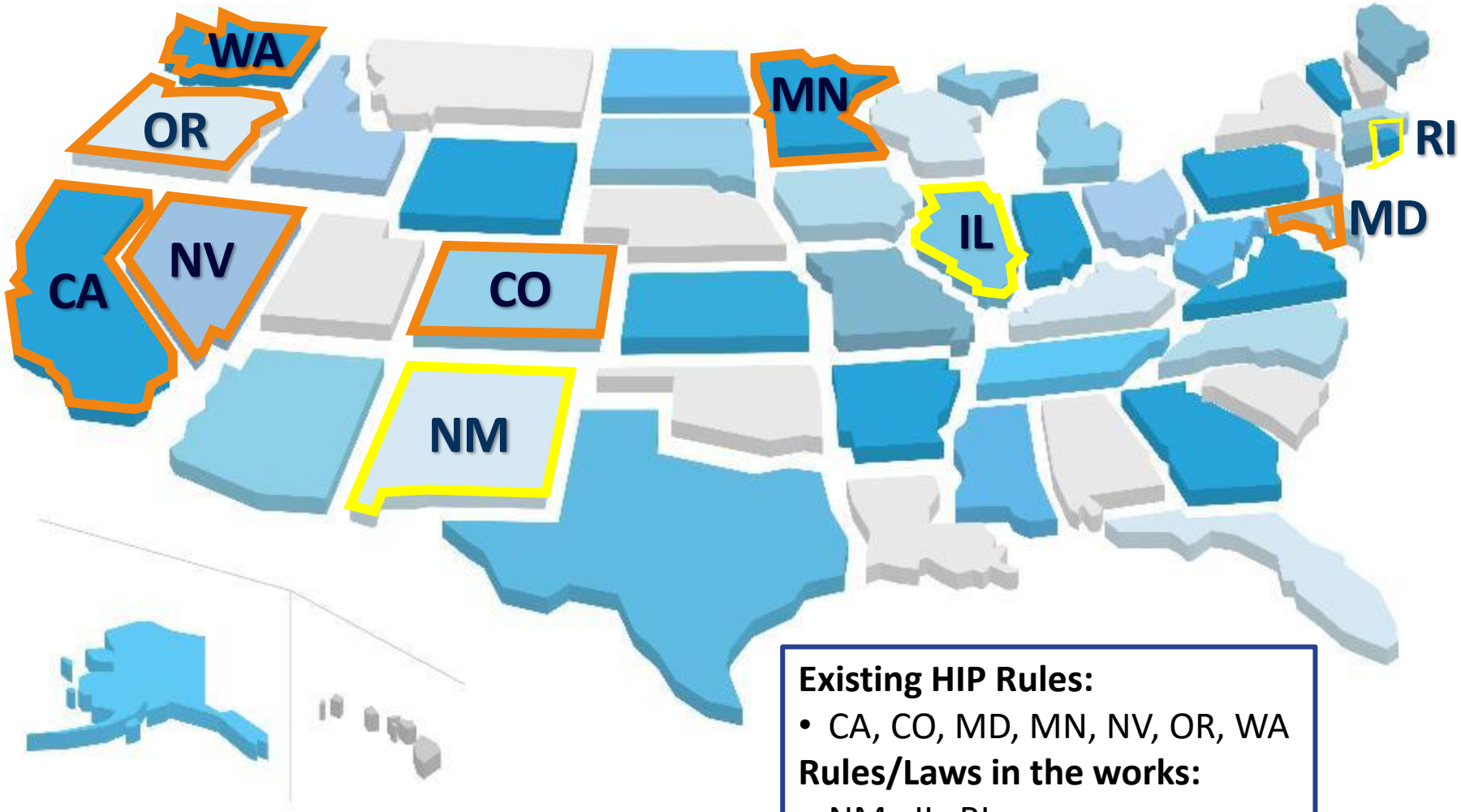
Agency	Agenda Stage of Rulemaking	Title	RIN
DOL/OSHA	Prerule Stage	Process Safety Management and Prevention of Major Chemical Accidents	1218-AC82
DOL/OSHA	Prerule Stage	Mechanical Power Presses Update	1218-AC98
DOL/OSHA	Prerule Stage	Prevention of Workplace Violence in Health Care and Social Assistance	1218-AD08
DOL/OSHA	Prerule Stage	Blood Lead Level for Medical Removal	1218-AD10
DOL/OSHA	Prerule Stage	Heat Illness Prevention in Outdoor and Indoor Work Settings	1218-AD39
DOL/OSHA	Proposed Rule Stage	Infectious Diseases	1218-AC46
DOL/OSHA	Proposed Rule Stage	Amendments to the Cranes and Derricks in Construction Standard	1218-AC81
DOL/OSHA	Proposed Rule Stage	Communication Tower Safety	1218-AC90
DOL/OSHA	Proposed Rule Stage	Emergency Response	1218-AC91
DOL/OSHA	Proposed Rule Stage	Lock-Out/Tag-Out Update	1218-AD00
DOL/OSHA	Proposed Rule Stage	Tree Care Standard	1218-AD04
DOL/OSHA	Proposed Rule Stage	Welding in Construction Confined Spaces	1218-AD23
DOL/OSHA	Proposed Rule Stage	Personal Protective Equipment in Construction	1218-AD25
DOL/OSHA	Proposed Rule Stage	Powered Industrial Trucks Design Standard Update	1218-AD26
DOL/OSHA	Proposed Rule Stage	Walking Working Surfaces	1218-AD28
DOL/OSHA	Proposed Rule Stage	Occupational Exposure to Crystalline Silica: Revisions to Medical Surveillance Provisions for Medical Removal Protection	1218-AD31
DOL/OSHA	Proposed Rule Stage	Worker Walkaround Representative Designation Process	1218-AD45
DOL/OSHA	Final Rule Stage	Update to the Hazard Communication Standard	1218-AC93
DOL/OSHA	Final Rule Stage	Procedures for Handling of Retaliation Complaints Under the Whistleblower Protection Statutes	1218-AD30
DOL/OSHA	Final Rule Stage	Occupational Exposure to COVID-19 in Healthcare Settings	1218-AD36
DOL/OSHA	Final Rule Stage	Procedures for the Handling of Retaliation Complaints Under the Anti-Money Laundering Act	1218-AD37
DOL/OSHA	Final Rule Stage	Procedures for the Handling of Retaliation Complaints Under the Criminal Antitrust Anti-Retaliation Act	1218-AD38
DOL/OSHA	Final Rule Stage	Improve Tracking of Workplace Injuries and Illnesses	1218-AD40
DOL/OSHA	Final Rule Stage	Procedures for the Use of Administrative Subpoenas	1218-AD44

Ongoing Heat Illness Rulemaking



Map of States with Existing / Proposed Rules

CONN MACIEL CAREY



Existing HIP Rules:

- CA, CO, MD, MN, NV, OR, WA

Rules/Laws in the works:

- NM, IL, RI

Let the Heat Rulemaking Stagnate OR Finalize a Simple Flexible Fed Heat Rule

CONN MACIEL CAREY

- Pros of a Flexible Standard Now:
  - Amended Heat Standard would be more manageable and feasible to implement
  - Fed OSHA heat standard would reduce confusing and conflicting patchwork of inconsistent state laws and regulations (by model and/or preemption)
  - Avoid the next Administration easily finalizing the current proscriptive, onerous proposed rule
  - Unlikely to be revisited by future Administrations b/c of other priorities

OSHA Modernization

RFI for Ideas for Deregulation

- 4/11/25 - OMB issued a Request For Information soliciting comment on exiting federal regulations
- RFI encourages comments re: regulations that are:
  1. Inconsistent with statutory text or the Constitution;
  2. Where costs exceed benefits;
  3. Outdated or unnecessary; or
  4. Burdening American businesses in unforeseen ways.
- Comments due 5/12/25 (we requested an extension)

OFFICE OF MANAGEMENT AND BUDGET

Request for Information: Deregulation

AGENCY: Executive Office of the President, Office of Management and Budget (OMB).

ACTION: Notice of request for information (RFI).

SUMMARY: OMB solicits ideas for deregulation from across the country. Commenters should identify rules to be rescinded and provide detailed reasons for their rescission. OMB invites comments about any and all regulations currently in effect.

DATES: Consideration will be given to written comments received by May 12, 2025.

ADDRESSES: Please submit comments via *https://www.regulations.gov/* and follow the instructions for submitting comments. Alternatively, you can submit your comment via the Submit Your Deregulatory Recommendations portal on the *regulations.gov* homepage. OMB will not respond to or address individual submissions.

Employers OSHA Modernization Coalition

CONN MACIEL CAREY

- ***Employers OSHA Modernization Coalition*** will recommend changes to OSHA regulations and policies
- NOT our intention to undermine the important mission of OSHA or MSHA
- Identify discreet regs, standards, policies, or processes in need of modernization
- Recommend targeted revisions to those regs, standards, policies, or processes to ensure they are workable for industry and remain protective
- Submit written comments to OMB's RFI (and future requests for stakeholder input)
- Advocate directly to OSHA and the White House to initiate or advance rulemakings to amend specific rules and to amend policies and processes

Top 10 Ideas for Modernization / Deregulation

CONN MACIEL CAREY

1. LOTO Modernization (accept effective alternative measures/limit annual requirements)
2. Rescind the Worker Walkaround Representative Designation Process Rule
3. Finalize a Performance-Oriented Version of a Heat Illness Prevention Rule
4. Rescind ladder retrofit requirements of the Walking-Working Surfaces Standard
5. Eliminate “Medical Evaluation” requirements for N95/Dust Mask respirator users
6. Apply the “Cold and Flu” Recordkeeping Exemption to COVID-19 (and like) Viruses
7. Pare Back E-Recordkeeping (Detailed 301 Incident Report Submissions)
8. “Repeat” classification policy (totality of circumstances, shorter lookback, same location)
9. Modernize the employee misconduct defense (discipline not a pre-condition)
10. Severe Violator Enforcement Program (qualifying and exit ramp criteria and timing)

2025 OSHA Webinar series

CONN MACIEL CAREY

OSHA 2024 in Review and 2025 Forecast
Tuesday, January 28th

How to Avoid the Five Most Cited General Industry OSHA Standards
Thursday, March 20th

Massage Therapy/ART and Other Cutting-Edge Recordkeeping Issues
Wednesday, May 14th

What You Should Know About OSHA Formal Letters of Interpretation
Tuesday, June 17th

Top 5 Construction Industry OSHA Citations
Wednesday, August 13th

OSHA's PSM Standard, EPA's RMP Rule, the CSB, and Cal/OSHA's PSM
Thursday, October 16th

Key Considerations in IH (Chemicals & Dust)
Monday, February 10th

CMC's Heat Illness Prevention Rulemaking Coalition Meeting
Thursday, April 24th

OSHA and MSHA in Construction and Mining Operations
Tuesday, June 10th

Developments in the Retaliation and Whistleblower Landscape
Wednesday, July 9th

Protect Your Interest: Workplace Crisis Management
Wednesday, September 10th

Workplace Violence Prevention Strategies
Thursday, November 13th

New Approaches to Performance Management (HOP) Auditing and Enforcement
Tuesday, December 16th

2025 Cal/OSHA Webinar series

CONN MACIEL CAREY

Workplace Safety after COVID-19 Regulations Sunset and the Potential General Industry Infectious Disease Standard
Tuesday, March 27th

Federal and State OSHA Heat Illness Prevention (OSHA & Cal/OSHA Crossover)
Thursday, April 24th

Cal/OSHA Mid-Year Update
Wednesday May 21st

Top Cal/OSHA Violations
Wednesday, June 18th

Top Strategies for Reviewing Your Safety Program
Thursday, July 24th

How Safety Impacts the Workplace Beyond OSHA
Wednesday, August 27th

Protect Your Interest: Workplace Crisis Management
Wednesday, September 10th

Process Safety Update
Thursday, October 16th

CMC's 3rd Annual Cal/OSHA and Employment Law Summit
Tuesday, October 21st and Thursday, October 23rd

Workplace Violence Prevention Strategies
Thursday, November 13th

Annual Cal/OSHA Enforcement and Regulatory Update: Are You Ready for 2026?
Thursday, December 4th

2025 MSHA Webinar series

CONN MACIEL CAREY

MSHA's 2024 Review / 2025 Preview and SCOTUS
Thursday, January 30th

Navigating MSHA Complaints and Accident Investigations
Tuesday, February 18th

MSHA's Silica Rule
Thursday, March 13th

MSHA Whistleblower Update and Understanding 105c
Tuesday, April 22nd

Converging Compliance: Navigating OSHA and MSHA In Construction and Mining Operations
Tuesday, June 12th

MSHA Mid-Year Review of Significant Decision Update
Tuesday, August 19th

Protect Your Interest: Workplace Crisis Management
Wednesday, September 10th

Navigating OSHA & MSHA During a Government Shutdown
Wednesday, October 15th

Deep Dive into Unwarrantable Failures
Wednesday, November 19th

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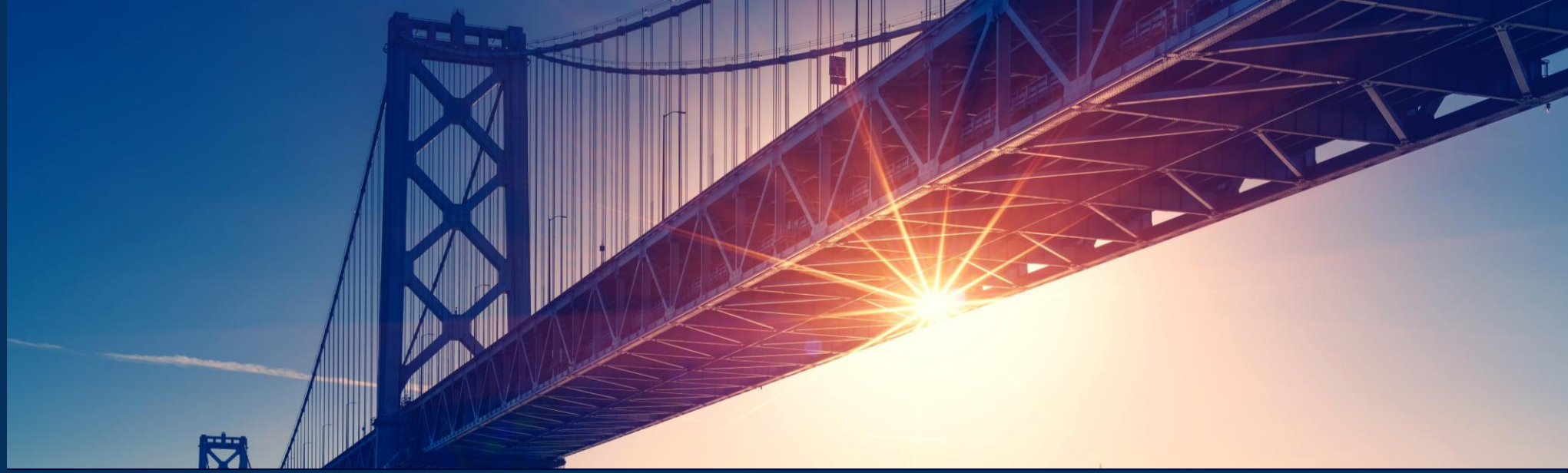

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