

The Outlook for OSHA

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Overview

- Political Climate
- OSHA's Rulemaking Agenda
- Enforcement Crackdown

POLITICAL CLIMATE

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Today's OSHA

- OSHA leadership is:
 - Vocal about protecting workers
 - Familiar with making industry a target
 - Inclined to treat non-union employers harshly to help advance organized labor's agenda
 - Enforcement driven – focused on issuing as many citations as possible, big penalties and daily press releases

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Today's OSHA

- Which industries are targeted?
 - Grain handling
 - Chemical manufacturing/refining
 - Health hazards – lead, silica
 - Retail?
 - Becoming more of a target
 - Grocery stores: Machine guarding, LOTO, eyewashes, Hazard Communication, ingress/egress
 - Warehousing/Manufacturing: Forklift/equipment issues, process safety issues with ammonia refrigeration

Legislating by Budgeting...

- What will OSHA's budget look like for fiscal 2013?
- Your guess is as good as mine...
- Sequestration cuts \$46 million off of OSHA's budget of \$564.8 million budget (8.1%)
- State OSHA plans would also be cut
- Most likely scenario: furloughed inspectors and fewer programmed inspections

RULEMAKING AGENDA

Injury and Illness Prevention Program – I2P2

- OSHA's highest regulatory priority
- Requirement to develop and implement a plan that identifies hazards in the workplace and establishes methods to eliminate or mitigate the hazards – shifts the burden to employers

I2P2

- What is the big deal? Don't all large employers have a safety and health program?
- OSHA would never have to issue another standard
 - Employer responsible for addressing and mitigating all hazards
 - Workplace violence example: Employee or member of the public assaults an employee
 - Kind of like the General Duty Clause on steroids

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I2P2

- Risk of “Monday-morning quarterbacking” is substantial
 - If an employer has an accident, then their program must not be sufficient
 - Double dipping – OSHA cites for a violation of I2P2 and a violation of a standard

Future of Ergonomics? *I2P2*

- With I2P2, OSHA does not need an ergonomics standard
- Employers required to identify and abate or mitigate all hazards in the workplace, including ergonomics
- I2P2 and the recordkeeping change work together
 - OSHA 300 Logs show MSDs
 - Employer has failed to mitigate hazards, which violates I2P2

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I2P2 Status

- OSHA plans to issue a proposal by 12/13 (seems ambitious to me...)
- A standard could take years to promulgate and will be challenged
- Significant questions about whether OSHA can do this because what exactly is the “hazard”?

The Rest of the OSHA Agenda

- Walking/working surfaces – Final rule in 8/13
- Recordkeeping – OSHA considering electronic submission of OSHA 300 data; proposed rule in 5/13
- Silica – deadline unclear
- Combustible dust – deadline unclear

The Rest of the OSHA Agenda

- Most interesting part of the regulatory agenda – what isn't there...
 - It is pretty thin
 - OSHA appears to be putting all of its eggs in the I2P2 basket

ENFORCEMENT CRACKDOWN

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Enforcement

- “Tough enforcement” – easier politically than issuing standards; also makes it harder for Congress to cut OSHA’s budget
- “Regulation by shaming”
 - More “willful” citations (4x as many in 2009)
 - Higher penalties
 - Hard-hitting press releases
- Attitude of some at OSHA: “Issue the press release and worry about the facts later”; “Let the lawyers sort it out”

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What does this Mean for Retail Grocery?

■ Top 10 standards cited for FY 2012

FY 2011	
Standard	Description
19100147	The control of hazardous energy (lockout/tagout)
19100178	Powered industrial trucks
5A0001	General Duty Clause
19100303	General requirements
19100333	Selection and use of work practices
19100212	General requirements for all machines
19100335	Safeguards for personnel protection
19040007	General recording criteria
19040032	Annual summary
19040039	Failure to report fatality/injury

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SVEP

- Severe Violators Enforcement Program
 - If certain numbers of willful/repeated violations of designated standards, employers are designated for the SVEP
 - Result? Corporate-wide inspections, and very difficult to “exit” the program
 - Is this a risk for retail?

What does this Mean for Retail Grocery?

- Biggest General Duty Clause threats:
 - Workplace violence – OSHA has been emboldened in this area; new CPL out that goes beyond late-night retail
 - Ergonomics – OSHA is looking for a test case, but do they have the resources?

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What does this Mean for Retail Grocery?

- Citations can add up – too many “repeats” or “willfuls” can put you in SVEP
- Rather than settling for a penalty reduction, should you fight back to keep your record clean?
- How can you prepare your people to handle an OSHA inspection effectively so as to minimize liability? (Difficult with multiple facilities)

QUESTIONS?

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