

Safety and Health Update 2017

Nexsen Pruet “Workplaces that Win” Webinar

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Overview

- **Safety and health regulators**
- **Developments at OSHA**
- **Recordkeeping changes**
- **Penalty increase**
- **Temporary worker initiative**
- **Focus on whistleblower cases**
- **Inspections**
- **Workplace violence**
- **Opioid crisis**
- **Phone use while driving**

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Safety and Health Regulators

- **OSHA**
 - General industry (including manufacturing and office environments) and construction worksites in 24 states that don't have state plans, like GA
 - Maritime and fed. facilities
- **SC LLR Occupational Safety and Health Division**
 - General industry and construction worksites in SC
- **NC DOL Occupational Safety and Health Division**
 - General industry and construction worksites in NC
- **MSHA**
 - Mining

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Developments at OSHA

- **New administration**
- **Secretary of Labor confirmed**
- **Deputy Asst. Secretary for OSHA is in place**
- **No formal nominations yet for other top posts at OSHA, including Asst. Secretary**

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Developments at OSHA

- **Few changes to date:**
 - Regulatory freeze
 - Blocked “Fair Pay and Safe Workplaces” Exec. Order a/k/a “Blacklisting Rule”
 - ERR compliance deadline pushed back
 - Less bombastic press releases
- **Other changes may come:**
 - May transition back to more of enforcement plus compliance assistance mode
 - May trim back ERR and new fines
 - May restore traditional burden of proof in whistleblower cases

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Recordkeeping Changes

- **Status**
 - **In effect in OSHA states and in NC and some other state plan states**
 - **Two requirements**
 - **Both are being challenged in court, but for now employers have to comply with them**
 - **Not in effect yet in SC and some other state plan states (but LLR will investigate retaliation claims that involves mandatory post-accident drug testing)**

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Recordkeeping Changes

- **Submission of injury and illness data through new website for publication on line**
 - **Sites with 250+ employees:**
 - **Form 300A for 2016 by Dec. 1, 2017**
 - **Forms 300, 300A, and 301 for 2017 by July 1, 2018**
 - **Sites with 20-249 employees in “high hazard” industries:**
 - **Form 300A as of Dec. 1, 2017 and annually thereafter**

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Recordkeeping Changes

- **“Reasonable procedure” for reporting work-related injuries and illnesses that is not retaliatory**
 - **No blanket post-accident drug testing—only if:**
 - **Drugs/alcohol were likely contributor**
 - **Test can identify impairment at time of accident**
 - **Isn’t perceived as punitive or embarrassing**
 - **No incentive plan where bonus is based on low number of injuries (as opposed to other indicators like violation of policy)**

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Penalty Increase

- **In 2016 OSHA increased penalties for first time since 1990**
- **Adjusted annually for inflation—as of 2017:**
 - **For serious citations, from \$7,000 max to \$12,675 max per citation**
 - **For willful or repeat citations, from \$5,000-\$70,000 to \$9,054-\$126,749 per citation**
- **SC, NC, and some other states with state plans have not increased penalties**

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Penalty Increase

- **Background for recent increase:**
 - In 2015 Congress passed legislation requiring fed. agencies to adjust civil penalties for inflation
 - But did not amend OSH Act, which specifies maximum fines for OSHA violations
 - So increase is being challenged and could be rolled back

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Temporary Worker Initiative

- **Started in 2013 to get employers to provide more safety training to temp staff**
- **When temp worker injured OSHA cites and fines both host employer and temp agency**
- **Mostly targets host employers who don't train temps on how to safely operate machines and equipment in manufacturing and construction**
- **Not formally adopted in SC and NC, but both states using OSHA's TW publications as guidance**

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Temporary Worker Initiative

- **HR challenge:**
 - Usually try to avoid treating temps like employees
 - But OSHA's position:
 - Give temps same training as full-time employees performing same duties
 - Document attendance at training sessions
 - Include them in safety meetings
 - Make them aware of emergency response plans
 - Make sure who they know to ask about safety issues

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Focus on Whistleblower Cases

- **OSHA enforces whistleblower protections in OSH Act plus 21 other statutes, including:**
 - **Clean Air Act**
 - **Affordable Care Act**
 - **Air 21**
 - **Sarbanes-Oxley**

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Focus on Whistleblower Cases

- **In 2016 revised Whistleblower Investigations Manual**
- **Lowered standard of proof for whistleblowers**
 - **No longer have to show “prima facie” case for OSHA to investigate**
 - **If based on investigation OSHA finds “reasonable cause” to believe retaliation occurred, will issue “cause” determination**
 - **RC = “a reasonable judge could believe”**

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Inspections

- **First impression:**
 - Designated interface with OSHA
 - 300 logs
 - Safety manual and written programs
 - Documentation of training
 - First reports of injury
 - MSD sheets
 - Posters

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Inspections

- **Train supervisors**
 - Their actions generally imputed to employer
- **Enforce rules**
 - “Unanticipated employee misconduct” defense
 - Training
 - Discipline
- **Be familiar with any prior citations at other company sites**
- **Be familiar with any safety audit recommendations**
- **Focus on “low hanging fruit”**

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OSHA's Top Ten for 2017

1. **Fall protection in construction**
2. **Hazard communication**
3. **Scaffolding**
4. **Respiratory protection**
5. **Lockout/tagout**
6. **Ladders in construction**
7. **Powered industrial trucks**
8. **Machine guarding**
9. **Fall protection – training requirements**
10. **Electrical – wiring methods**

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OSHA and Workplace Violence- Definitions and Statistics

- **OSHA defines “workplace violence” as: “violence or the threat of violence against workers” that “can occur at or outside the workplace” and “range from threats and verbal abuse to physical assaults and homicide.”**
- **OSHA estimates 2 million American workers are victims of workplace violence each year.**

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OSHA and Workplace Violence- General Duty

Employers who do not take reasonable steps to prevent or abate a recognized violence hazard in the workplace can be cited under the OSH Act General Duty Clause.

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OSHA and Workplace Violence- High Risk Sectors

- **Particularly high risk sectors and jobs include those that:**
 - **Require the exchange of money with public, i.e. bank tellers, in-person bill payment;**
 - **Deliver passengers, goods, or services, i.e. Uber, taxis, phone/cable installers, mailmen;**
 - **Work alone or in small groups, i.e. gas/water/utility servicers;**
 - **Work late night or early morning hours, i.e. service industry;**
 - **Work in high crime areas or in community settings and homes, i.e. health care and social service workers, visiting nurses, psychiatric evaluators and probation officers.**

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Workplace Violence- OSHA Recommends

- **OSHA strongly recommends—at a minimum:**
 - **Establishing a zero tolerance policy for violence against or by your employees;**
 - **Incorporating the policy into employee handbook or accident prevention program; and**
 - **Ensuring that all employees are aware of the policy and know that all claims of workplace violence will be investigated and remedied promptly.**

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Workplace Violence- OSHA Recommends (cont'd)

- For additional protection, OSHA also recommends employers:
 - Provide refresher safety education at least once per year. This will ensure that employees who have been with the Company for a long time are reminded of what type of conduct is not acceptable.
 - Secure the workplace. Where appropriate to the business, install video surveillance, extra lighting, alarm systems, and minimize access by outsiders through identification badges, electronic keys, and guards.
 - Where appropriate—provide drop safes to limit amount of cash on hand.

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Workplace Violence- OSHA Recommends (cont'd)

- **For additional protection, OSHA also recommends:**
 - **For employees who travel or routinely leave the office, ensure they have a contact person on-site who is aware of their location throughout the day.**
 -
 - **For employees who visit homes or other potentially chaotic locations, develop policy to address who can be present in location during employee visit and inform employees of their right to refuse service if they feel unsafe.**

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OSHA and Workplace Violence

“See Something Say Something”

- **Train employees that if they “see something say something” and to not be afraid to question—employees are the first line of defense.**
- **Employees often see unfamiliar people in office or on-site but are afraid to stop and question for fear of embarrassment.**

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OSHA and Workplace Violence

“See Something Say Something” (Cont’d)

- **Employees should know they will not be disciplined or ridiculed for asking an unfamiliar face for identification or an explanation of their presence.**
- **In fact, employees should know the Company ENCOURAGES this type of proactive response.**

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OSHA and Workplace Violence- Steps for Employees

- **Employees can also take steps to protect themselves, including:**
 - **Learn how to recognize, avoid, or potentially diffuse violent situations by attending personal safety training programs.**
 - **Alert supervisors to any concerns and report all incidents immediately.**
 - **Avoid traveling alone into unfamiliar locations whenever possible.**
 - **Carry only minimal money and required identification into community settings.**

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OSHA and Workplace Violence- Steps for Employers

- **What should employers do following a workplace violence incident?**
 - **Provide prompt medical attention immediately;**
 - **Encourage employees to report and log all incidents and threats immediately;**
 - **Report violent incidents to police;**
 - **Inform victims of their legal right to prosecute;**

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OSHA and Workplace Violence- Steps for Employers (cont'd)

- Institute corrective actions (if necessary);
- Discuss circumstances with staff members and “de-brief,” i.e. brainstorm ways to prevent incident from recurring;
- Offer stress debriefing sessions and post-traumatic counseling sessions to help workers recover.

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The Opioid Crisis and the Workplace

- **As many as 50,000 Americans may have died in 2016 as a result of opioid-related overdoses.**
- **Number continues to increase as use of prescription opioids reaches staggering levels.**
 - **4 in 5 heroin addicts developed addiction from prescription painkillers.**
- **In 2012, more than 259 million prescriptions were written for opioids, with the number much higher today.**

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The Opioid Crisis and the Workplace

Difference Between Heroin, Morphine, and Opioids

- Heroin is a semi-synthetic *opiate* made from morphine. Morphine, in turn, is a naturally-occurring substance extracted from the seed pod of the poppy plant. A chemical reaction with acetic anhydride turns morphine into heroin.
- The poppy plant is grown primarily in Eastern Asia and also grown in Mexico.
- Heroin can be injected and, depending on purity, inhaled or smoked. However, heroin is never 100% pure.
- Conversely, most prescription painkillers, i.e. OxyContin and Percocet, are *opioids*. Opioids are a sub-set of opiates, i.e., all opioids are opiates, but not all opiates are opioids. These painkillers are essentially pharmaceutical grade heroin manufactured in a laboratory.

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Signs, Symptoms, and Effects-Heroin and Prescription Painkillers

- The signs, symptoms, and effects of heroin and prescription painkillers are very similar.
- Signs and Symptoms:
 - Short term: Intense surge or rush of euphoria; Dry mouth; Nausea/vomiting; warm/flushed/itchy skin; constricted pupils; respiratory depression.
 - Long term: Weight loss; collapsed veins (injected heroin); skin abscesses or inflamed tissue around injection sites (injected heroin).
- Effects: HIV (heroin needle-sharing), Hepatitis (heroin-needle sharing), coma, seizures, death.

Opioid Crisis – Effects on the Workplace

- **Employees could be prescribed opioids to relieve pain following workplace injury. This may, in turn, lead to dependency.**
- **Employee may become:**
 - **Frequently drowsy;**
 - **Have shifting/erratic mood swings;**
 - **Anxiety;**
 - **Depression.**

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Opioid Crisis – Effects on the Workplace (Cont'd)

- **Employee may also:**
 - **Struggle to maintain regular attendance;**
 - **Achieve performance goals;**
 - **Pose a safety hazard to self and co-workers;**
 - **Develop financial issues leading to potential for embezzlement or theft.**

Opioid Crisis – Drug Testing

- **Drug testing is important but should generally be done only at two specific times:**
 - **Pre-employment but post-job offer OR**
 - **Post-accident based on “reasonably articulable suspicion” that accident/incident was caused by impairment or that drug test will determine whether employee was impaired at time of accident/incident.**

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Opioid Crisis – Drug Testing (cont'd)

- **Random drug-testing is not categorically barred but, if used, employers should take significant steps to ensure the testing is TRULY random.**
 - **Otherwise, employers run the risk of a discrimination claim and running afoul of new OSHA rule regarding drug tests.**

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Opioid Crisis – Lessons for Employers

To further address opioid use, employers should consider:

- 1. Creating and fostering an environment where employees are more likely to disclose opioid-related issues. Starts by creating a workplace conducive to free exchange of information. Important to balance concern with not invading privacy and making sure employees know Company is there and not ignoring potential issues.**

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Opioid Crisis – Lessons for Employers

To further address opioid use, employers should consider:

- 2. Reconsidering Zero Tolerance Drug-Test Fail Policies. Employee who loses his job due to failed drug test may fall further into depression and exacerbate problem. Can amend policy to require counseling for first failed test but leave room for immediate termination “at Company discretion.”**

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Opioid Crisis – Lessons for Employers (cont'd)

- 3. More closely monitoring workers' compensation claims. Under guise of “conservative” treatment (i.e. cheaper), insurance companies may be more inclined to pay for opioid treatment for on-the-job injuries as opposed to more aggressive options (i.e. steroid/cortisone injections, surgery, etc.)**
 - As such, there can be a higher incident of dependency and/or increased tolerance simply in the name of reducing financial impact.**
 - Employers can, and should, monitor how their carriers are managing injured workers' treatment.**

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Opioid Crisis – Lessons for Employers (cont'd)

- 4. Revisiting and enhancing counseling programs. Now is the time to evaluate and enhance these programs. Consider whether insurance may provide and whether employees are aware of the program.**

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Distracted Driving and the Workplace

- Statistics

- **Distracted driving claim 3,477 lives in 2015 according to the National Highway Traffic Safety Administration.**
- **OSHA recognizes that the “reaction time for a driver who is texting or talking is as slow as it is for someone who is legally drunk.”**
- **OSHA may issue fines/citations if employers don’t do enough to prevent.**

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Distracted Driving and the Workplace

– Statistics (cont'd)

- **Person who is texting focuses attention away from road for 4.6 seconds. At 55 mph that is equivalent of driving length of football field while blindfolded.**
- **OSHA says “employers have a legal obligation to have a clear, unequivocal, and enforced policy against the hazard of texting while driving.”**

Distracted Driving and the Workplace - OSHA

- **OSHA policy provides that it is the Company's legal responsibility to safeguard drivers at work—whether they drive full-time for the company or only occasionally and whether they drive a Company vehicle or their own.**

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Distracted Driving and the Workplace – Lessons for Employers

- **Employers should:**
 - 1. Establish policy clearly prohibiting all texting while driving and emphasize this policy regularly to any employee who drives for the Company.**
 - 2. Make clear to managers and supervisors that they should not text employees when they know they are driving.**

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Distracted Driving and Workplace – Lessons for Employers (Cont'd)

- 3. Establish culture that makes it unnecessary for employees to text while driving—i.e. make sure they know they are not required to respond while driving.**
- 4. Set-up clear procedures, times, and places for drivers' safe use of texting and communicating with co-workers and customers.**
- 5. Eliminate any possible financial or other incentive for employees to “feel the need” to text while driving.**

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Distracted Driving and the Workplace – OSHA Policy

- **OSHA has a dedicated distracted driving page and also provides a sample/model policy. The model policy can be found at:**
- **https://www.osha.gov/Publications/motor_vehicle_guide.html**

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Questions or Comments

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