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IN THE NEWS

OSHA Under A New Administration



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The transformation will result in fewer new rules and worksite inspections

With the inauguration of President Trump — and the dozens of Executive Orders that flowed from the White House over the next couple of days — there is no doubt that a significant transformation is occurring throughout the federal government. At the Occupational Safety and Health Administration (OSHA), it is evident that we are in the early days of a major reconfiguration of the agency's enforcement efforts — i.e., fewer new rules and worksite inspections — as part of the full implementation of the President's America First agenda.

Below is an overview of what's happening at OSHA right now and a few things that may happen in the weeks and months ahead.

Disappearing DEI

All government agencies, including OSHA, are now busy getting rid of Diversity, Equity, Inclusion (DEI)-related staff, policies, and documents and implementing a hiring freeze. Trump's Executive Order — Ending Illegal Discrimination and Restoring Merit-Based Opportunity — directs all government agencies to remove any remaining DEI-related language and programs from their operations and contracting agreements and instructs the Office of Federal Contract Compliance Programs within the United States Department of Labor to “immediately cease:

- (A) Promoting “diversity”;
- (B) Holding federal contractors and subcontractors responsible for taking ‘affirmative action’; and
- (C) Allowing or encouraging federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.”

The Executive Order also instructs the Director of the Office of Management and Budget, with the assistance of the United States Attorney General, to:

- Excise references to DEI and DEIA [diversity, equity, inclusion, and accessibility] principles under whatever name they may appear, from federal acquisition contracting, grants, and financial assistance procedures to streamline those procedures, improve speed and efficiency, lower costs, and comply with civil rights laws.
- Terminate all diversity, equity, equitable decision-making, equitable deployment of financial and technical assistance, equitable advancing equity, and similar mandates, requirements, programs, or

activities as appropriate.

Trump wants to extend this “DEI eradication” into the private sector by broadening the reach of last summer’s decision by the United States Supreme Court (USSC) — Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, No. 20-119. This decision said that the affirmative action programs at Harvard — which informed admission decisions based on race and ethnicity — were in violation of the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

It is reasonable to assume that the Trump Administration will be instigating new litigation, using the same legal arguments, against private companies that maintain their DEI-inspired workforce policies and practices.

The Heat Standard Will Fizzle

The Heat Standard public comment period ended on January 14, 2025, and was originally projected to become final this year. With the change in administration, we expect that the rule will either be dramatically scaled back or indefinitely delayed. It is doubtful it will go away entirely. Employers should remember that OSHA’s National Emphasis Program for Outdoor and Indoor Heat-Related Hazards remains effective until April 2025.

The Walkaround Rule Will Probably Stumble

OSHA’s controversial Walkaround Rule went into effect on May 31, 2024. It allows third parties — including union officials — to accompany OSHA compliance officers on workplace inspections. A pending lawsuit in the United States District Court for the Western District of Texas (Chamber of Commerce v. OSHA) could soon block or vacate the rule entirely. Business groups are arguing that the rule exceeds OSHA’s authority and conflicts with the National Labor Relations Act (NLRA).

Injury/Illness Recordkeeping May Flip-Flop

An employer’s electronic recordkeeping and submission responsibilities were first established during the Obama Administration when OSHA mandated the electronic submission of injury and illness data for all companies with 250 or more employees. President Trump rescinded that requirement in 2019. The Biden Administration released a new final version of the rule in July 2023, which became effective on January 1, 2024. The final rule requires establishments with 100 or more employees in designated industries to submit certain information from Form 300 and 301 once a year. Questions remain about whether the rule will be changed — or ditched entirely — under the new administration.

For now, however, the Biden rule remains in place. Employers covered by this rule are still required to upload their 2024 OSHA Form 300 log, Form 300A Summary, and Form 301 Incident Report information to the agency’s Injury Tracking Application (ITA) by March 2, 2025.

What now?

So far, several rules currently in process have not been impacted by any specific executive action: the “Prevention of Workplace Violence in Healthcare and Social Assistance” rule, the communications tower safety standard, the proposed tree care standard, and revisions to the process safety management standard.

It’s safe to assume that for the next few months, if not longer, no new regulations will come from any government agency. President Trump has issued a memorandum—Regulatory Freeze Pending Review—directing “all executive departments and agencies” to refrain from proposing or issuing “any rule in any manner” until a department or agency head appointed or designated by the president reviews and approves the rule.

Other than this regulatory freeze, the new Department of Government Efficiency (DOGE)— led by Elon Musk—has been charged with reducing the federal budget. We can anticipate recommendations for significant cuts in all federal agencies. At OSHA, this will mean less administrative staff and fewer compliance officers.

If you have any questions or concerns about how these recent regulatory changes will affect your business, don’t hesitate to contact Orr & Reno for assistance.

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