

What's the Latest with OSHA?

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MEC

Today's Presenters



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Presenter

William J. Wahoff



“Bill”

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614-456-1654

- Past Chair of the Ohio Bar WC Committee and Board-Certified in Workers’ Compensation
- National Federal OSHA Practice
- OSHA-Authorized 10- & 30-Hour General Industry Course Trainer
- U.S. Chamber OSHA Committee
- ABA OSHA Law Committee Active Member for 28 years
- ABA OSH Law Treatise Co-Editor-in-Chief
- Listed in *Chambers U.S.A.*
- Listed in *The Best Lawyers in America* and *Super Lawyers*
- Licensed in Ohio and Texas

Presenter

Nelva J. Smith Seymour



“Nelva”

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614-301-6267

- ABA, L&E Section, Occupational Safety & Health Law Committee Active Member for nearly 10 years
- National OSHA Practice, e.g., OH, NJ, NY, CT, FL, IL, AL, WI, WV
- ABA OSH Law Treatise Editor
- Completed OSHA 10 & 30 Hour General Industry Courses
- EEOC, FMLA, ADA cases defended
- Higher Education Practice
- Licensed in Ohio

Presenter

John Keeling



“John”

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304-669-9643

- Professional Member, American Society of Safety Professionals
- Full Member, American Industrial Hygiene Association
- Registered PE – KY and WV
- Certified Industrial Hygienist
- Certified Safety Professional
- Licensed Asbestos Inspector

Increased Penalties and New Initiatives in 2023

- Increased Serious and Other-Than-Serious penalty amounts for 2023 to \$15,625 per violation.
- Increased Willful and Repeat penalty amounts for 2023 to \$156,259 per violation.
- Instance-by-Instance:
 - Certain types of violations which the agency identifies as “high-gravity” serious violations of OSHA standard.
 - Including, but not limited to, LO/TO, machine guarding, permit-required confined space, respiratory protection, falls, trenching, and recordkeeping
 - May be applied when the text of the standard allows (such as per machine, location, entry, or employee) and when the violative instances cannot be abated by a single abatement method.
 - A separate penalty is assessed for each violation
 - For example: in fall protection – a separate citation for each platform hole through which an employee might fall.

Increased Penalties and New Initiatives in 2023

- Instance-by-Instance, ctd.
 - Departure from previous OSHA policy – which only applied in “egregious willful” cases
 - Now, not required to show that the employer intentionally disregarded health and safety standards or that the employer was plainly indifferent to safety or health requirements
 - \$\$\$\$\$\$
- Grouping Violations
 - OSHA encouraging enforcement personnel to refrain from grouping violations where there is evidence that work site conditions giving rise to the violations are separate and distinct, or where different conduct gave rise to the violations.
 - Will result in higher penalty amounts and more total violations
 - \$\$\$\$\$\$
- Effective March 26, 2023

Actions of Current Administration

- **Workplace Violence rulemaking – currently in small-business review step**
 - **Focused on health-care and defining high-hazard areas**
- **Changes to Process Safety Management Standard – comments submitted last year – still under review**
- **Lead Standard Revision – comments were due last year**
- **Hiring increase – approx. 900 inspectors – hired 227 inspectors since 2021**
- **Proposing older policy as rule – revives “Fairfax Memo” – non-employees to participate in inspections.**
- **Revises OSHA’s Combustible NEP 01-2023**
- **Severe Violators Enforcement Program – Now easier for OSHA to Label Company**
- **Cooperative programs such as the Star program, VPP, Alliances still very active**
- **Emphasis on Whistleblower support – October 19th “better customer service”**
 - **New rule covered under OSHA whistleblower protection: Taxpayer First Act – protects those who report federal income tax violations**
- **Heat Illness Standard – Comments have been made and are closed – Standard expected before next Summer – consider American Foundry Society Standard**
- **Changes to amend federal recordkeeping regulation: Form “301” included**
- **For Manufacturers COVID-19 – Limited National Emphasis Program with no secondary list. GENERAL DUTY CLAUSE used in COVID-19 Outbreaks**

Current Enforcement Environment

- **Machine Guarding, LOTO, Powered Industrial Trucks, Fall Protection**
- **1-1-2015 – Amputation Report Rule is still huge in numbers of inspections**
- Since 2017 – OSHA has issued more than \$15 million in fines to Dollar General and had more than 180 inspections nationwide
- LO/TO – ALJ affirms citations for AL manf. Facility – pay more than \$1.3 million in penalties. Criminal: pay \$500,000 fine and \$1 million in restitution
- Fall protection – 03/2023 – Cleveland – GC and balcony installer both cited. GC cited for \$154,696 (willful) and installer cited for \$31,252 (willful)
**fatality*
- MG and others – 03/2023 – GA – insulation manf. Cited willful and repeats - \$423,432
- Amputation – MG, LO/TO – 03/2023 – WI cannery - \$222,779
- Amputation – MG – Barberton – 02/2023 – tool manf. \$164,742 (history of similar injuries)

Current Enforcement Environment (Ctd.)

- Amputation – LO/TO – IL – 02/2023 – Grain cooperative - \$629,946
- Electrocution LO/TO– MO – 01/2023 – US Engineering Services - \$197,642
- MG, LO/TO – KS – 01/2023 – plastics manf. - \$292,421 **fatality*
- PIT – AR – 01/2023 – lumbar supplier and retailer - \$218,759 **fatality*
- LO/TO, confined space – WI – 01/2023 – malt barley company - \$174,351
- Trenching – TX – 12/2022- utility contractor - \$165,952
- MG, PPE – TX – 12/2022 – vehicle parts manf. - \$298,338
- MG – WI – 12/2022 – heavy fabrication manf. - \$250,696

Top Ten Frequently Cited OSHA Standards 2021

**2022 not out yet*

1. Fall Protection – construction
2. Respiratory Protection
3. Ladders – construction
4. Hazard Communication
5. Scaffolding – construction
6. Fall Protection Training – construction
7. Control of Hazardous Energy (LO/TO)
8. Eye and Face Protection – construction
9. Powered Industrial Trucks
10. Machinery and Machine Guarding



1. Fall Protection, 8. PPE, 3. Ladders 5. Scaffolding

- General Industry: 4 ft/ Construction: 6 ft
- Also – when working over dangerous equipment or machinery, regardless of distance
- Employers must:
 - Guard every floor hole into which a worker can accidentally walk (railing and toe-board or floor hole cover)
 - Provide guard rail and toe-board around every elevated open sided platform, floor or runway
 - Must provide guardrails and toe-boards when working over dangerous machines or equipment
 - Other means of fall protection may be required for certain jobs
 - Select and provide PPE at no cost – employer must certify and require PPE
 - Train workers about job hazards and PPE in a language they can understand
 - Ladders – Specific rules on a ladder being 3 feet above the roof
 - Scaffolding – must be assembled by a qualified individual



Top Ten – 2. Respiratory Protection

- An N95 that you buy off the shelf is not just a mask, it is considered a “respirator” by OSHA.
- If you **require** an employee to wear an N95 or other respirator to guard against COVID-19 or any other lung hazard, such as silica, lead, fumes, smells, etc., you **must** follow 29 CFR Section 1910.134, the Respiratory Protection Standard:
 1. Medical Questionnaire
 2. Review and possible physical examination by a physician, including pulmonary function studies
 3. Fit testing of each make and model of N95 or other respirator
 4. Training on the limitations of respirators, the proper handling and use, storage and replacement
 5. Keeping documentation of all of the above, but confidentially

Top Ten – 4. Hazard Communication



- The employer must inform your employees of the hazards of the chemicals that are used in the business, even if they are “household use” chemicals.
- The employer must collect “Safety Data Sheets” from the manufacturers or distributors of the chemical agents and then have them available for employee review.
- All containers must be properly labeled with the required information under 29 CFR Section 1910.1200, even if the employee uses a secondary container on a temporary basis. Those containers often are not really temporary and result in at least \$14,502 in citations, unless reduced for good faith or size.
- You must train your employees about the chemical hazards, so they understand how to handle them, what PPE they need, what not to do with the chemicals.
- Some cleaning agents react to each other like chlorine and ammonia, which when mixed produce a toxic gas, so training is required and essential.

7&10: Control of Hazardous Energy LO/TO and Machine Guarding



Machine Guarding – LO/TO

- From September 1, 2022 to December 31, 2022, in Ohio, **65** inspections were initiated due to an **AMPUTATION** – which must be reported to OSHA by phone or internet w/i 24 hours
 - Cincy: **18**; Cleveland: **19**; Columbus **10**; Toledo **18**
 - Typically, then the employer will be cited with either a 147 LOTO or 212 etc. Machine Guarding citation, then a detailed inspection of the whole plant
 - Citations and Proposed Penalties of \$200K, \$400K, \$600k etc. result because a variety of violations are found

LO/TO General Industry

29 CFR 1910.147



Important Requirements from 1910.147:

- Develop, implement and enforce an energy control program
- Use lockout devices for equipment that can be locked out. Tagout devices may be used in lieu of lockout devices only if the tagout program provides employee protection equivalent to that provided through a lockout program.
- Ensure that new or overhauled equipment is capable of being locked out.
- Develop, implement, and enforce an effective tagout program if machines or equipment are not capable of being locked out.
- Develop, document, implement and enforce energy control procedures
- Use only lockout/tagout devices authorized for the particular equipment or machinery and ensure that they are durable, standardized and substantial.

LO/TO General Industry

29 CFR 1910.147



- Important Requirements, ctd.:
 - Ensure that lockout/tagout devices identify the individual users
 - Policy that permits only the employee who applied a LO/TO device to remove it
 - Inspect *procedures annually*
 - Provide *training* for all employees covered by the standard – do not use “boilerplate” training

Machine Guarding



- **1910.212(a)(1)**: One or more methods of machine guarding shall be provided to protect **the operator and other employees** in the machine area from hazards such as those created by **point of operation**, *ingoing nip points, rotating parts, flying chips and sparks*. Examples of guarding methods are - barrier guards, two-hand tripping devices, electronic safety devices, etc.
- **1910.212(a)(2)**: Guards shall be affixed to the machine where possible and secured elsewhere if for any reason attachment to the machine is not possible. The guard shall be such that it does not offer an accident hazard in itself.

Training on Machine Guarding

- The user should take into account the safeguarding supplier's instructions, specifications, recommendations, etc., when developing a training program
- Training should include, but not be limited to:
 - types of safeguarding;
 - capabilities/options of safeguarding;
 - description of safeguarding for a specific application and hazard;
 - function of the safeguarding;
 - proper installation and operation of the safeguarding;
 - functional testing of the safeguarding;
 - limitations of the safeguarding;
 - abnormal or unexpected operation of the safeguarding.
 - **NO REACHING UNDER, AROUND OR OVER GUARDS for Production Personnel – do not use defeat devices such as magnets!**
- The user shall verify their understanding and provide for continued competency



9. Powered Industrial Trucks

- The employer must train and qualify any person before they drive or operate a powered industrial truck, like a forklift or palletizer
- Training under 1910.178 must include, but not be limited to:
 - Training formulated according to the documentation provided
 - With the powered industrial truck (PIT);
 - Operating the PIT under supervision;
 - Training about fire and explosion, and respiratory hazards;
 - Permitted and forbidden loads, such as personnel and add-ons not authorized by the manufacturer;
 - Classroom training and practical training
 - Warnings and precautions and the differences from other motor vehicles
 - Visibility, capacity and stability
 - Pedestrian traffic and speeds
 - Ramps, narrow aisles, and many others



Potential Employer Defenses

- Employee Misconduct
 - Employees ignored training regarding PPE, Face Coverings or 6 foot distancing:
 - 1) Employer had a rule;
 - 2) Adequately communicated work rule;
 - 3) Employer disciplined employees on [similar, if possible] safety & health issues;
 - 4) Employer took reasonable steps to discover noncompliance.
- Impossibility/Technical Infeasibility of Compliance
 - Document unavailability of respirators or certain sizes of respirators, Fit Testing Kits, etc.
- Greater Hazard of Strict Compliance over interim protective measures
- Lack of Coverage - Standard doesn't apply to a specific industry
 - Scientific basis developing/not known

OSHA Required **Reporting** of Fatality or Severe Injury

All employers are required to report work-related (no matter the size of the employer), call OSHA or online:

- A **fatality** within 8 hours, if it occurs within 30 days of the work event;
- An **amputation**, **eye loss**, or ***in-patient* hospitalization**, within 24 hours.
 - The in-patient hospitalization must occur within 24 hours of the work-related event or exposure. (Unless COVID-19)
- Public Transportation or on public roads
- Report all heart attacks on the job, work-relatedness will be determined later



OSHA Recordkeeping – OSHA 300 log/301 Incident Report

- **Recording: OSHA:** For non-exempt employers with 10 or more employees, to record any fatality, injury, or illness that is *work-related*, and is a *new case*; **AND meets one or more** of the *general recording criteria* of §1904.7 or *specific cases* of §1904.8 - §1904.11, regardless of WC compensability
- Generally, an injury or illness is OSHA Recordable unless some exception applies, such as first aid only, or solely related to the non-work cause
- Death, days away from work, transfer of duties, certain illnesses, loss of consciousness, medical treatment, etc., are recordable

Multi-Employer Worksite Employer Categories



- **Exposing Employer** - An employer whose employees were exposed to a hazard that may or may not have been created by that employer.
- **Creating Employer** - An employer who is alleged to have created a hazard to which employees were exposed.
- **Controlling Employer** - The employer who was responsible by contract or actual practice for the site with authority to correct.
- **Correcting Employer** - The employer who allegedly had the responsibility to correct the hazard.

The Inspection Process

- 4 Area Offices: Columbus, Cleveland, Toledo, Cincinnati
- No advance notice – either obtain consent from employer or obtain warrant
- Always request Compliance Officer's (CO) credentials
- Opening conference should be in separate, quiet area – ask reason for inspection
- **Have inspection plan in place! Train the team!**
- Identify trade secrets to CO – provide any necessary PPE
- Accompany CO on inspection, ask questions, set up time table, take side-by-side videos and/or pictures that CO takes – **TAKE NOTES**
- Never agree with a statement by the CO, say “look into that,” “consider that”
- Sit in on management interviews – cannot sit in on hourly employee interviews
- Get all requests for documents in writing from OSHA
- Closing Conference – may be same day or a later date.
- Citations received – **15 working days** for an Informal Conference or to file Notice of Contest

Occupational Safety & Health Review Commission (OSHRC)

- Most of the time the goal is a favorable settlement, but you can take the case to hearing before an Administrative Law Judge (ALJ) who is part of the Occupational Safety and Health Review Commission that is not part of OSHA.
- Cases will often be set for hearing within 3-5 months from the date of contest.
- The OSHA lawyer will file a “complaint” attaching the citations and the employer “Respondent” will file an answer. The Administrative Law Judge will have a conference at which hearing and “discovery” dates will be set
- Depositions, or live proceedings at which questions will be asked and answered, can be taken of the Compliance Officer, other OSHA personnel, or of management or hourly witnesses.
- Additional documents can be gathered and experts retained by either side to help them in their case.
- Briefs will be filed. The ALJ will render a written decision after hearing. That decision is subject to further review by the Occupational Safety and Health Review Commission, a three member appointed body, and then by the Court of Appeals in the Circuit in which the plant is located or the D.C. Circuit.

QUESTIONS?



Disclaimer

These materials are public information and have been prepared solely for educational purposes to contribute to the understanding of ethics, energy, and oil and gas law. These materials reflect only the personal views of the author and are not individualized legal advice. It is understood that each case is fact-specific, and that the appropriate solution in any case will vary. Therefore, these materials may or may not be relevant to any particular situation. Thus, the author and Steptoe & Johnson PLLC cannot be bound either philosophically or as representatives of their various present and future clients to the comments expressed in these materials. The presentation of these materials does not establish any form of attorney-client relationship with the author or Steptoe & Johnson PLLC. While every attempt was made to insure that these materials are accurate, errors or omissions may be contained therein, for which any liability is disclaimed.



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Bill Wahoff concentrates on keeping his clients in compliance with health and safety laws, including OSHA on a national basis, Ohio workers' compensation, Ohio VSSR, and intentional tort litigation defense. He has vigorously represented employers at several thousand Ohio administrative hearings, in numerous court cases, including jury trials, and mandamus actions.

He also has significant experience representing employers in federal and state court employment litigation and in labor negotiations. He has handled ADA, FMLA, and race, gender-based, Title VII discrimination cases, arbitrations, federal and state wage and hour matters, and has bargained with the UAW, Steelworkers, Glass Molders and Potterers, OEA and OAPSE.

He is serving as the Management Co-Editor-in-Chief for the Treatise on Occupational Safety and Health Law, Fifth Edition, for the American Bar Association Section on Labor and Employment Law, Occupational Safety & Health Committee. He also has been an active participant, presenter and moderator for the Midwinter meeting for over 28 years. He was chosen by the Chief Judge to present to the Federal Occupational Safety & Health Review Commission (OSHRC) Judicial Conferences in both 2008 and 2010. An Ohio State Bar Association Board-Certified Workers' Compensation Specialist, he is also an OSHA Authorized 10 & 30 Hour General Industry Trainer. He is a Fellow of The College of Labor & Employment Lawyers, and is listed in Chambers USA. He is also listed in *The Best Lawyers in America*® for Labor Law - Management, Employment Law - Management, and Workers Compensation Defense for Employers. He has been listed in *Ohio Super Lawyers* since the inception of that list. He also has been a *Martindale Hubbell Preeminent* lawyer since 2002.

The College
of Labor and
Employment
Lawyers

LEADERSHIP FOR GREATER PURPOSE

REPRESENTATIVE EXPERIENCE

Defended employers in various fatality cases involving OSHA in Ohio, Texas, South Dakota, California, Illinois, West Virginia, Rhode Island, and New Mexico

Defended employers in numerous OSHA cases initiated by reports of amputations to OSHA

Defended food processing manufacturer in an ammonia release OSHA case

Defended rubber manufacturer in a TDI exposure case against OSHA

Assisted a Connecticut manufacturer in reducing a classification from repeat to serious in OSHA citations

Assisted a wood products equipment dealer in contesting OSHA citations regarding specific pieces of wood working equipment, including planers, dimensional equipment, larger stationary routers and shapers, table and radial arm saws regarding cross cuts and rips

Assisted numerous nursing homes and long-term care facilities during the COVID-19 Pandemic with OSHA inspections and defending citations

Assisted numerous manufacturers in responding to rapid response letters from OSHA area offices in Georgia, Ohio, Rhode Island, California, and West Virginia

Defended a manufacturer in the rubber and plastics industry in Missouri on Combustible Dust OSHA citations that were vacated

Defended a manufacturer in the rubber mixing industry in Alabama resulting in key OSHA Citations vacated

Defended a manufacturer in the rubber mixing industry in Wisconsin resulting in an Administrative Law Judge ruling vacating the explosion hazard citations regarding a majority of the cited dust collectors and setting forth a method to analyze combustible dust cases scientifically – the first reported decision in the rubber mixing industry since the OSHA National Emphasis Program

Defended a national construction company in the oil and gas industry in Ohio on citations at a fractionation plant that were vacated

Defended a manufacturer in the rubber mixing industry in Ohio in one of the first sets of citations under the combustible dust OSHA National Emphasis Program (NEP)

Defended a national restoration/construction company in Ohio resulting in willful citations changed in classification

Defended a regional restoration/construction company in Ohio resulting in repeat citations reduced to serious

Gave counsel to a chemical company in Georgia resulting in OSHA citations being vacated by the local office

Defended a silico-tuberculosis intentional tort case in Ohio resulting in dismissal

Defended a joint venture manufacturer from Japan in a wrongful death electrocution intentional tort case involving an in-plant testing machine

Defended asbestos cancer death claims under workers' compensation for a prominent aircraft engine manufacturer

Defended silicosis claims for a manufacturer of oil rig engines

Defended a large semi-truck (tractor) manufacturer regarding rotating machinery OSHA citations

Counseled employers regarding ANSI and NFPA standards' enforceability by OSHA in the machine guarding (control reliability) and fire and explosion arenas

Counseled large construction employers regarding the use of GFCI throughout the site instead of relying on grounding and how to deal with an OSHA inspection focused on that issue

Defended numerous workers' compensation claims involving alleged psychiatric and/or psychological injuries and disabilities, including PTSD, Major Depression, Anxiety and other Mood Disorders, as well as alleged Post-Concussive Syndromes from head trauma with very brief periods of losses of consciousness

Defended hundreds of workers' compensation claims with alleged orthopedic and neurological injuries, as well as various lung, otolaryngological, and urological injuries

Defended a lawsuit in the nail gun industry, a lawsuit regarding a railroad car door falling on an employee, and a lawsuit involving an oil company truck striking a minor

Defended Ohio VSSR claims in rubber and plastics, steel, and other industries in machine guarding and personal protective equipment Experienced in defending FMLA, wrongful discharge, ADA, and race, religion and gender discrimination claims and lawsuits

Defended claims alleging silicosis, asbestosis, berylliosis, coal workers' pneumoconiosis and related cancers

Defended citations involving multi-employer sites, machine guarding, lockout/tagout (LOTO), ergonomics, combustible dust, indoor air (silica, asbestos, lead), electrical, robots, hoists and slings, hazard communication, housing, containing and dispensing hazardous liquids, respirators, material handling, fall protection, trenching, scaffolds, ladders, PPE-construction, FR Clothing, HazCom-construction, lead in construction, GFCI, portable power tools, uncovered rebar, training related to all of the foregoing, recordkeeping, ingress and egress, fire extinguishers and appliances, evacuation plans, numerous General Duty Clause citations, and counseled regarding drug and alcohol, immediate reporting of injuries, and safety incentive policies.

Extensive experience in occupational safety and health for unionized employers

Experienced in union contract negotiations and labor arbitrations for private sector manufacturing clients

WORK EXPERIENCE

2015	Steptoe & Johnson PLLC
1995-2015	Scott, Scriven & Wahoff LLP, Founding Partner
1982-1994	Squire, Sanders & Dempsey, Law Clerk (1980), Summer Associate (1981), Associate (1982), Profit Sharing Associate (1989), Equity Partner (1992)

MEMBERSHIPS AND AWARDS

PROFESSIONAL

Fellow, The College of Labor & Employment Lawyers, 2018 - Present

Peer Review Rated AV-Preeminent by Martindale-Hubbell since 2002

Chambers USA: America's Leading Lawyers for Business – Labor & Employment (2021-Present)
The Best Lawyers in America®, Employment Law - Management (2020-Present), Labor Law -
Management (2022-Present), Worker's Compensation Law - Employers (2015-Present)
Super Lawyers® in Ohio Workers' Compensation – Employers 2004-2020
U.S. Chamber of Commerce, Labor Relations and OSHA Committees
American Bar Association, Labor & Employment Law Section, OSHA Committee Member
Management Co-Editor-in-Chief, Treatise, "Occupational Health and Safety Law, 5th Edition," ABA
Labor & Employment Law Section (OSHA Law Committee)
Chapter Editor, Treatise, "Occupational Health and Safety Law, 3rd and 4th Editions," ABA Labor &
Employment Law Section (OSHA Law Committee)
OSHA Committee Past Membership Liaison to Section, ABA-Labor & Employment Law Section
United States Court of Appeals for the Sixth Circuit, Admitted
Immediate Past Chair - Ohio State Bar Association, Workers' Compensation Committee
Chair and Founder, Employment Law Alliance (ELA) Occupational Safety & Health (OSH) Law Group,
formed May, 2020
OSHA Authorized 10 & 30 Hour General Industry Course Trainer
Ohio Chamber of Commerce, Labor & Employment and Workers' Compensation Committees
Columbus and Cincinnati Bar Associations, Workers' Compensation Committees
Columbus, Cincinnati, Cleveland Metro, Mahoning County and Marion County, (Ohio) Bar Associations
Ohio State Bar Association Board-Certified Workers' Compensation Specialist, 1999-2024
Issue Planning Editor for *The Ohio State Law Journal*
American Foundry Society, Member
Speaker, Manufacturers Education Council
Speaker, Association for Rubber Products Manufacturers
Contributor, Inside Rubber and Plastics News Magazines

CIVIC

Service Above Self Award, Rotary District 6690, 2005-2006
Silver Beaver Award Recipient, Simon Kenton Council, Boy Scouts of America, 2007
Columbus Rotary Club Member
Worthington A.M. Rotary Club, Past Member and Past Board Member
Dublin A.M. Rotary Club, Past President and Board Member
Past District Committee Member, Rotary International
Simon Kenton Council, Boy Scouts of America, Past Board Member and Past Volunteer Executive V.P,
Operations; Buckeye District, Past District Chair, Past Nominating Committee Chair and Past FOS Chair
Current Merit Badge Counselor, Buckeye District
Troop 169, Committee Member
Troop 862, BSA, Past Committee Chair
Troop 268, BSA, Past Assistant Scoutmaster
Knights of Columbus, Member
Friends of Josephinum Seminary, Past Board Member

NRA Member and Certified Range Instructor Pistol, Rifle, Shotgun
Life Member, Republican National Committee
Life Member, The Ohio State University Alumni Association

Speaking Engagements/Publications

Moderator, March 25, 2021, American Bar Association OSH Law Committee Mid-Winter Meeting, Occupational Safety & Health Review Commission(OSHRC) and FMSHRC Commissioners Update, National Annual Conference

Presenter, March 23, 2021, Employment Law Alliance (ELA), OSHA's New Guidance and National Emphasis Program on COVID-19, Webinar

Presenter, March 18, 2021, Ohio State Bar Association, OSHA Update in the New Administration, Webcast

OSHA Presenter, December 15, 2020, Employment Law Alliance (ELA), Expectations in Labor & Employment Law in the New Administration, National Webinar

Presenter, November 6, 2020, The Woodlands (Texas) Chamber of Commerce, Return to Work Issues During the COVID-19 Pandemic, Webinar

Presenter, October 16, 2020, Ohio State Bar Association, Midwest Labor & Employment Law Conference, OSHA, Workplace Safety and Health in the Time of COVID-19, Webinar

Presenter, October 13, 2020, Wooster Chamber of Commerce, NLRA, Protests and COVID-19, Webinar

Presenter, September 16, 2020, Ohio Chamber of Commerce, Back to School: Rights and Responsibilities of Employers and Employees, with Additional COVID-19 Updates, Webinar

Presenter, July 29, 2020, Return to Work under COVID-19, National Webinar, Steptoe & Johnson PLLC

Moderator, June 17, 2020, Ohio Chamber of Commerce, NLRA, Protests and Return to Work, Webinar

Presenter, June 11, 2020, Marcellus Shale Coalition, Return to Work and COVID-19, Webinar

Presenter, May 7, 2020, Mapping Out the New Normal, National Webinar, Steptoe & Johnson PLLC

Presenter, May 6, 2020, Employment Law Alliance (ELA), COVID-19 Plans Considering OSHA Guidance, National Webinar

Moderator, March 5, 2020, American Bar Association OSH Law Committee Mid-Winter meeting, Occupational Safety & Health Review Commission(OSHRC) and FMSHRC Commissioners Update, Rancho Mirage, California

Presenter and Panelist, January 17, 2020, Ohio Self-Insurers' Association, OSHA Update, including LOTO, Machine Guarding, and the General Duty Clause, Columbus, Ohio

Author, 2019, "Industry Standards: How Does OSHA Use Them to Prove Its Case Under the General Duty Clause?," ABA Journal of Labor & Employment Law, Vol. 34, No. 1

Presenter, July 17, 2019, Association of Rubber Products Manufacturers National Safety Summit, "The Relationship of OSHA Proposed Penalty Cases and the Lockout/Tagout and Machine Guarding Standards," Columbus, Ohio

Presenter/Panelist, March 7, 2019, American Bar Association, Labor & Employment Law Section, Occupational Safety & Health Law Committee Midwinter Meeting, "OSHA Recordability, Reportability and Impact on Workers' Compensation: The Interplay between OSHA's Amended 29 CFR 1904.35 and Workers' Compensation Laws and Administration," Breakout Session, San Juan, Puerto Rico

Presenter, December 5, 2018, Phylmar Regulatory Roundtable Webinar, "Federal OSHA 'Clarification' of Drug Testing and Corporate Incentive Programs," Sacramento, California

Moderator, July 25, 2018, Ohio Chamber Webinar, "Update on Labor Issues Under the Trump Administration," Columbus, Ohio

Presenter, June 20, 2018, Ohio Chamber Webinar, "OSHA's Agenda Under the New Acting Assistant Secretary," Columbus, Ohio

Presenter, April 11, 2018, Energy and Mineral Law Foundation, "OSHA's Process Safety Management (PSM) Standard," Pittsburgh, Pennsylvania

Presenter, March 2, 2018, American Bar Association, Occupational Safety &

Health Law Committee Midwinter Meeting, “The General Duty Clause: How Does OSHA Prove Its Case and What Role Do Industry Standards Play?,” General Session, Santa Monica, California

Presenter, January 17, 2018, Lorman Webinar, “Medical Records Law (such as HIPAA) in Workers’ Compensation Claims: Know What You Can Release”

Presenter, December 5, 2017, Ohio Chamber of Commerce, “10 Management Mistakes to Avoid,” Medina, Ohio

Presenter, November 16, 2017, NBI, “Seven Ways the Ohio Workers’ Compensation System Differs from Those of Other States,” Cincinnati, Ohio

Presenter, August 1, 2017, NBI, “Ohio Workers’ Compensation Coverage and Differences from Insurance States,” Cincinnati, Ohio

Presenter, July 19, 2017, Association of Rubber Products Manufacturers National Safety Summit, “HazCom Enforcement in the First 180 days of the New Administration,” Columbus, Ohio

Presenter, July 12, 2017, Ohio Chamber of Commerce Webinar, “OSHA Requirements for Confined Spaces in General Industry and Construction”

Presenter, June 30, 2017, Ohio Chamber of Commerce, “10 Management Mistakes to Avoid,” Port Clinton, Ohio

Presenter, June 13, 2017, Ohio Hospital Association Annual Conference, “New Landscape of the Department of Labor and OSHA in the Trump Administration,” Columbus, Ohio

Presenter, May 31, 2017, Phylmar Business Roundtable National Safety Webinar, “Future of OSHA Interpretations after the D.C. Circuit’s Agricultural Retailers PSM Decision”

Presenter, May 17, 2017, Ohio Chamber of Commerce Webinar, “Recordability, Reportability and Compensability”

Presenter, March 15, 2017, Ohio Chamber of Commerce, “10 Management Mistakes to Avoid,” St. Clairsville, Ohio

Moderator, March 10, 2017, American Bar Association, OSH Committee

Midwinter Meeting, "OSHA Interpretations after Agricultural Retailers," Jupiter, Florida

Presenter, February 23, 2017, Webinar, Association of Rubber Products Manufacturers, "OSHA Record Keeping"

Presenter, January 17, 2017, Webinar, Ohio Chamber of Commerce, "Medical Releases and Workers' Compensation"

Presenter, October 19, 2016, Robotics Industries Association, "OSHA Standards versus Robotics Standards," Cincinnati

Presenter, September 16, 2016, Ohio State Bar Association, "Hot Wage and Hour Issues," Cleveland

Presenter, September 14, 2016, Webinar, Ohio Chamber of Commerce, "OSHA's Rules Regarding Employee Incentive Programs"

Presenter, July 14, 2016, "FLSA and OSHA Regulatory Changes," Ohio Chamber of Commerce: Marietta, May 24, 2016, Pataskala, June 21, 2016, Urbana, Champaign County

Presenter, June 13, 2016, "OSHA's Multi-Employer and U.S. Department of Labor Joint Employee Doctrines," Ohio Hospital Association Annual Conference

Presenter, June 8, 2016, "Privacy In The Workplace and Employee Monitoring," Human Resources from A to Z, NBI Seminar, Columbus

Presenter, May 25, 2016, "Train Your Supervisors About Your Ohio Workers' Compensation Program," Ohio Chamber of Commerce Webinar

Presenter, May 17, 2016, "OSHA's New Rules Regarding Worker Safety Incentive Programs," Phylmar Regulatory Roundtable and the BioPharma EHS Forum, Webcast

Author, April 26, 2016, "OSHA Update", Steptoe & Johnson Blog Article

Moderator, March 10, 2016, "New Developments In Process Safety Management," ABA Labor & Employment Law Section, Occupational Safety & Health Committee Midwinter Meeting, Santa Barbara, CA

Author, March 3, 2016, IN COMPLIANCE? Be prepared! FLSA rule changes and OSHA penalty increases will happen in 2016

Presenter, November 18, 2015, "FLSA and OSHA Changes," Ohio Chamber of Commerce, Webcast

Presenter, August 18, 2015, "Creating FLSA Compliance Strategies That Work," NBI

Presenter, December 4, 2014, "Significant Decisions," Cincinnati Bar Association Advanced Workers' Compensation Seminar

Presenter, October 2014, "Workers' Compensation Update: Laws & Rules, Class Action Suit, Medical Facilities, and Claims Handling; OSHA Recordkeeping Changes," HRA of Southwestern Ohio (SHRM Affiliate), Wilmington, Ohio

Presenter, February 2014, "The Top 5 Safety & Health Considerations Upon Entering An Investigative Site" (from the OSHA perspective), Insurance Fraud/Fire Investigators' Joint Seminar

Presenter, December 2013, "Significant [Workers' Compensation] Decisions," Cincinnati Bar Association, Workers' Compensation Committee Advanced Seminar

Presenter Hot Topics in Employment Law, 2013, "PPACA/Obamacare: What Businesses Need to Know," Sterling Education Seminars

Moderator, 2013, "Significant [OSHA] Decisions," American Bar Association, Labor & Employment Section, OSHA Committee, Mid-Winter Meeting

Presenter, 2010-2012, "The Finer Points of OSHA Recordkeeping," "Injury & Illness Prevention Programs," "Combustible Dust," "Retaliation and Whistleblower Statutes Under OSHA's Enforcement Jurisdiction," Association of Rubber & Plastics Manufacturers' (ARPM) Safety Summit

Presenter, 2011, "Intentional Tort, RICO Liability, and Other Third Party Actions," Ohio Self-Insurers Association, Workers' Compensation Education Day

Presenter, 2010-2011, "Combustible Dust," Annual Ohio Workplace Safety & OSHA Compliance Conference



Nelva J. Smith | Member

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EDUCATION J.D. Capital University

Known as a fervent advocate for her clients, Nelva Smith is a labor and employment attorney whose wide-ranging experience makes her an extremely effective advisor for her clients. From general day-to-day counseling, to litigation, workers' compensation, and safety and health issues, employers of all sizes rely on Nelva to guide them through the myriad challenges of labor and employment law. Nelva is diligent and aggressive in defending her clients' interests and is experienced assisting clients in the automotive, aviation, construction, and manufacturing industries.

As a member of the firm's Workplace Safety Team, she has defended employers in front of the Industrial Commission on a variety of issues that arise out of Ohio workers' compensation matters, and she also has extensive experience in safety and health issues, with an emphasis on OSHA. She has presented on several occasions nationally on OSHA topics, and she has twice been a contributing editor to the national treatise on Occupational Safety and Health Law.

Nelva has experience defending employers in general employment litigation, charges before the Equal Employment Opportunity Commission, charges before the Ohio Civil Rights Commission, charges before the National Labor Relations Board, and defending OSHA citations, and she has also successfully handled wage and hour audits before a state government agency.

In addition, to her employment experience, Nelva is also on the firm's Higher Education Team and actively represents several universities and colleges in the region against Title IX litigation. Nelva is a member of the Environment, Social, Governance ("ESG") group, a group of attorneys with experience and knowledge about how ESG impacts all aspects of business.

REPRESENTATIVE EXPERIENCE

Defended OSHA violations for manufacturing clients in the aircraft and automotive industries resulting in reduced penalties and vacated citations

Defended a manufacturer in the rubber mixing industry in Ohio in one of the first sets of citations under the combustible dust OSHA National Emphasis Program (NEP)

Successfully represented rubber tire manufacturer in multiple OSHA citations involving combustible dust

Represented a large automotive component manufacturer in a workplace accident involving an extremity injury caused by hydraulic press, resulting in the OSHA citation being fully vacated

Represented a Missouri-based rubber mixing plant in multiple OSHA citations involving both machine guarding and combustible dust

Successfully negotiated multiple reduced penalties and vacated citations for an Alabama based chemical and large-scale rubber processing plant in matters involving hazard communication and personal protective equipment

Experienced in OSHA investigations and defense of OSHA citations throughout the nation

Advised financial services institution on “back to school” issues related to COVID-19

Advised national call center client on EFMLEA issues related to COVID-19 and employee leave

Represented higher education institution in claims in front of the Ohio Civil Rights Commission in defense of alleged racial and gender discrimination

Assisted healthcare client in matters involving alleged disability discrimination resulting in employee termination

Defended higher education institution against student filed racial discrimination complaint at the United States Department of Education Office for Civil Rights

Successfully defended accusation of willful citations for national restoration/construction company in Ohio for lead exposure

Regularly counsel clients on personnel matters involving hiring and firing, business organization, employee discipline, and civil rights

Defended North Dakota construction company in workplace safety matter involving fatality

Successfully defeated unsubstantiated unemployment claims for national call center

Advised Ohio based steel fabrication company on best practices to avoid OSHA violations

Counseled employers throughout Ohio in revising and updating employee handbooks in compliance with federal and state law

Investigated and prepared Position Statements in defense of unemployment claims

Assist employers throughout the state in revising and updating employee handbooks in compliance with federal and state law

Assisted in defense of an appeal to the Supreme Court of Ohio for a voluntary abandonment issue in the workers’ compensation field and was successful in providing a good result for the employer

Attended workers’ compensation hearings at the Industrial Commission throughout the state of Ohio

WORK EXPERIENCE

2015 Steptoe & Johnson PLLC

2008-2015 Scott, Scriven & Wahoff LLP

2005-2008 Legal Assistant, Scott, Scriven & Wahoff LLP

MEMBERSHIPS AND AWARDS

PROFESSIONAL

Columbus Bar Association

Ohio State Bar Association

American Bar Association

Certified, OSHA 10 Hour General Industry

Speaking Engagements/Publications

Presenter: S&J: "Tri State Update: Cannabis in the Workplace" – August 4, 2021

Presenter: Ohio Chamber: "OSHA and Employer Vaccination Programs" – June 24, 2021

Presenter: ARPM: "From the Legal Perspective: PPE and Vaccinations in the Workplace" – May 26, 2021

Trainer: Ohio Department of Higher Education: "Title IX Investigator Training" – January 12, 2021

Presenter: PIOGA: "Navigating Employer Legal Responsibilities through the COVID-19 Pandemic" – November 12, 2020

Presenter: ARPM: "Limits on How OSHA can Cite Employers for General Duty Clause Violations Using Industry Consensus Standards in a COVID-19 World" November 2020

Presenter: Ohio Chamber: "Back to School – Rights and Responsibilities of Employers and Employees, with Additional COVID-19 Updates" – September 16, 2020

Panelist: The Risk Institute: "Multi-Generational Mashup" September 2019

Presenter: ARPM: "The Relationship of OSHA Proposed Penalty Cases and the Lockout/Tagout and Machine Guarding Standards" July 2019

Presenter: AICUO: "#MeToo Movement Updates and Handling No Contact Orders" June 2019

Presenter: "OSHA Inspection Issues," March 2019

"OSHA, Outside Consultants, and Business Development: A Podcast with Bentley Talk," Legal Marketing Launch, November 2018

Presenter: "Performance, Unemployment and Wage & Hour Issues in Ohio: What Happened to Employment at Will?," November 2018

Presenter: "Overview of OSHA Inspections," November 2018

Presenter: "Ten Management Mistakes to Avoid – OSHA and Workers' Compensation Update," August and September 2018

Presenter: "Update on Labor Law Issues Under the Trump Administration," July 2018

Presenter: "Workplace Highs and Lows: OSHA, the ADA, and Medical Marijuana," July 2018

Presenter: "OSHA Compliance in the Healthcare Industry – Regulations Companies Must Comply With But Are Always Forgotten," June 2018

Presenter: "OSHA's Process Safety Management (PSM) Standard," April 2018

Presenter, "HIPAA Best Practices for HR: Ensuring Confidentiality of Medical Information," February 2018

Presenter, "Drugs and Alcohol in the Workplace: Marijuana and Other Considerations," February 2018

Presenter, "Medical Records Law in Workers' Compensation Claims: Know What You Can Release," January 2018

Presenter, "Preparing For and Dealing With Campus Protests," AICUO, October 2017

Presenter, "Machine Guarding and Lockout/Tagout-Related OSHA Penalties So Far in The Trump Administration," Ohio Chamber, September 2017

Presenter, "Are You In A Confined Space, OSHA Requirements for Confined Space in General Industry and Construction," Ohio Chamber, July 2017

Presenter, "The New Landscape of the Department of Labor and OSHA in the Trump Administration," Ohio Hospital Association, June 2017

Presenter, "Top Ten Management Mistakes to Avoid," Pataskala Chamber of Commerce, June 2017

Presenter, "Recordability, Reportability, and Compensability," Ohio Chamber, May 2017

Presenter, "OSHA Primer," ABA Occupational Safety and Health Committee Midwinter Meeting, March 2017

Presenter, "Medical Records Law in Workers' Compensation Claims: Know What You Can Release," January 2017

Presenter, "Finer Points of OSHA Recordkeeping and Recordability," Ohio Chamber, October 2016

Presenter, "Department of Labor New Overtime Rules with OSHA Bonus," St. Clairsville Chamber of Commerce, September 2016

Presenter, "Safety Incentive Programs Under 11(c) of the Federal OSH Act," Ohio Chamber, September 2016

Presenter, "Hot Wage and Hour Issues," OSBA, September 2016

Presenter, "The Ever-Changing Landscape of FLSA Wage & Hour Issues," Sterling Education, September 2016

Presenter, "Association of Independent Colleges and Universities of Ohio - NLRB," AICUO, June 2016

Presenter, "OSHA's Multi-Employer and U.S. Department of Labor Joint Employee Doctrines," Ohio Hospital Association, June 2016

Presenter, "Train Your Supervisors and Managers About Your Ohio Workers' Compensation Program," Ohio Chamber, May 2016

Presenter, "OSHA Primer," ABA Labor & Employment Law Section Midwinter Meeting, March 2016

"Are You In Compliance? Be Prepared! FLSA Rule Changes and OSHA Penalty Increases Will Happen in 2016," Ohio Chamber, December 2015

Presenter, "The Million Dollar Question: Are They Independent Contractors or Employees? What the Fair Labor Standards Act Could Cost Your Company," Ohio Chamber, November, 2015

Presenter, "Fair Labor Standards Act/Wage and Hour Critical Issues," Sterling

Education, September 2015

Moderator, "Combustible Dust: When is a hazard really a hazard? What is the real potential for explosion/deflagration?," ABA Labor & Employment Law Section Midwinter Meeting, March 2014

Presenter, "Wage Issues for Workers' Compensation," 2011

Chapter Editor, Occupational Safety and Health Law Treatise, Third and Fourth Edition



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EDUCATION BSCE University of Kentucky, 1974

John Keeling, PE, CIH, CSP, QEP, LRS is a Senior Environmental, Safety, and Occupational Health Consultant with more than 40 years of experience in Environmental and Occupational Safety/Health issues. Keeling has a BS Degree in Civil Engineering from the University of Kentucky and a variety of Professional Certifications/Licenses. As Senior Environmental, Safety, and Occupational Health Consultant he routinely provides services for environmental assessment and remediation projects, environmental due diligence associated with property transactions, NSR and Title V air emissions permitting/compliance, above ground storage tank compliance, NPDES related compliance (Process and Stormwater), Process Safety Management, workplace indoor air quality and working conditions assessments, IH Monitoring Program development, ISO Environmental Management Assessments, and litigation support. He has managed multiple WV Voluntary Remediation Program (VRP) projects. He has served as an Expert Witness in multiple Federal and State Court Cases over the past two decades.

WORK EXPERIENCE

- 2020 to Present - Senior Environmental, Safety, and Occupational Health Consultant – Steptoe & Johnson PLLC
- 2019 to July 2020 – Director – Benchmark EHS, Inc.
- 1990 to July 2020 – Vice President - MSES Consultants, Inc
- 1986 to 1990 - EHS Manager Specialty Graphite Operations – Union Carbide Corporation
- 1983 to 1986 - Superintendent of Production – Union Carbide Corporation
- 1976 to 1983 – Environmental, Health, and Safety Manager – Union Carbide Corporation
- 1974 to 1976 – Plant Engineer – Union Carbide Corporation
- 1970 to 1974 - Engineer in Training – Kentucky Department of Transportation

MEMBERSHIPS AND AWARDS

PROFESSIONAL

Registered Professional Engineer, State of West Virginia, Commonwealth of Kentucky
Certified Industrial Hygienist, American Board of Industrial Hygiene

Certified Safety Professional, Board of Certified Safety Professionals
Qualified Environmental Professional, Institute of Professional Environmental Practice
Licensed Asbestos Inspector/Asbestos Management Planner/Clearance Air Monitor
Licensed Remediation Specialist, West Virginia
Building Code Official – WV State Fire Marshall Office

INDUSTRY/CIVIC

Professional Member, American Society of Safety Professionals
Full Member, American Industrial Hygiene Association
Member, Air and Waste Management Association - Former West Virginia Chapter Chairperson
Chairman, Harrison County SARA Title III Local Emergency Planning Committee - Past Chairperson