

# *New Era...OSHA Compliance Increased Enforcement and OSHA's Latest*



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And

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## *Presenters*



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- National Federal OSHA Practice
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- U.S. Chamber OSHA Committee
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- ABA OSH Law Treatise Co-Editor-in-Chief
- Listed in *Chambers U.S.A.*
- Listed in *The Best Lawyers in America* and *Super Lawyers*
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- Certified Safety Professional
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## *OSHA's Updated Electronic Submission Requirements Effective January 1, 2024*

- 01/01/2024 – Employers with 100 or more workers in OSHA's "highest hazard" industries (manufacturing, retail, health care, performing arts, amusement parks, transportation, and delivery services) are now required to provide data from the OSHA 300 logs and 301 forms, in addition to the 300A data previously required to be submitted.
    - OSHA states that employers do not need to provide employee names, addresses, or health care providers – however, there has been no guidance on how the electronic submission will be set up to address potential employee privacy concerns.
  - Previously, those employers only needed to provide data from the Form 300A – establishments with 20 to 100 in certain high-hazard industries will still be required to submit data from the Form 300A
  - Failure to submit the data is tracked by OSHA every time an inspection is opened, and if the employer does not retain proof of submission (and it was submitted but OSHA has no evidence) – this can result in a recordkeeping citation.
- 
- Deadline to file is March 2, 2024



## *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. – Comment period extended to 11/13
- 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



## Heat Stress – OSHA’s Enforcement?

- In April 2022- OSHA put out a NEP for Outdoor and Indoor Heat-Related Hazards
- Approximately 4,700 inspections, but very minimal citations, instead focusing on education and sending out over 400 hazard alert letters advising employers on how to protect workers
- Approximately 140 alleged violations related to heat prevention, of those 85 include sanitation violations, including not having adequate drinking water
  - Also approximately 55 instances of construction safety training violations
- 30 citations for General Duty Clause violations, involving death or hospitalization because of inadequate heat protections
- In Ohio, there were **52** Heat NEP-related inspections from **8-1-2023 to 9-15-2023**



# Heat



## ***United States Postal Service, No. 16-1813 (OSHRC 2023)***

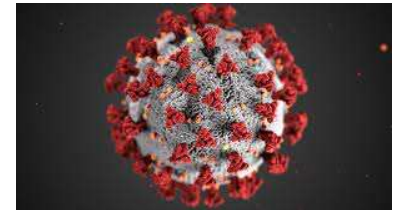
- The United States Postal Service cited for a repeat violation of the General Duty Clause of 29 U.S.C. § 654(a)(1) for exposing employees to an excessive heat hazard in Des Moines
- ALJ vacated citations, but OSHRC found ALJ did not address all elements of the GD Citation
- OSHRC found that there was both an excessive heat hazard and that the United States Postal Service could have feasibly and materially reduced that heat hazard by ensuring all employees received the heat training that only a few employees received
- Remanded so ALJ can address the remaining elements of a General Duty Clause Violation

## ***United States Postal Service, Nos. 16-1713, 16-1872, 17-0023, 17-0279 (OSHRC 2023)***

- After many heat-related illnesses among workers in Benton, Houston, Martinsburg, and San Antonio, OSHA issued multiple citations to the United States Postal Service for repeat violations of the General Duty Clause of 29 U.S.C. § 654(a)(1) (exposing employees to an excessive heat hazard)
- OSHRC found that the Secretary of Labor failed to identify specific measures the employer could have made to feasibly and effectively abate the heat hazard
- All citations were vacated

## *Measures for Reducing COVID-19 in the Workplace – Recent Citations List as Feasible Means of Abatement*

- Encourage vaccinations through training/posters
- Provide quality face coverings
- Continue physically distancing workstations
- Train employees on COVID-19 policy and enforce
- Remove COVID-19 positive or symptomatic employees from workplace
- Provide COVID-19 Testing
- OSHA will argue that employers can require face coverings and vaccinations
- Act on employee reports of safety and health concerns: Oct. 3-2023: House of Hounds, Fed. Dst. Idaho: Two employees, COVID-19, \$25,000 each



## Current Enforcement Environment

- Machine Guarding, LOTO, Powered Industrial Trucks, Fall Protection
- 1-1-2015 – Amputation Report Rule is still big in numbers of inspections
- PIV – 8-1-2023 to 9-15-2023# – 46 inspections in Ohio due to Powered Ind. Vehicles
- 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
- LO/TO – 04/2023 – Meat Processor – Cincinnati – Willful LO/TO citations - \$1.9 million
- Fall protection (Fatality) – 03/2023 – Cleveland – GC and balcony installer both cited. GC cited for \$154,696 (willful) and installer cited for \$31,252 (willful) #115 Fall Insp. in Ohio
- 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)

## *Top Ten Frequently Cited OSHA Standards 2022*

1. Fall Protection – construction – 5,915
2. Hazard Communication, general industry – 2,639
3. Ladders – construction – 2,449
4. Respiratory Protection – general industry – 2,412
5. Scaffolding – construction – 2,251
6. Control of Hazardous Energy (LO/TO) – 2,139
7. Powered Industrial Trucks – 1,896
8. Fall Protection Training, construction – 1,762
9. Eye and Face Protection, construction – 1,572
10. Machinery and Machine Guarding – 1,469



## *Top Ten – 2. 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.

# 6&10: Control of Hazardous Energy LO/TO and Machine Guarding



## Machine Guarding – LO/TO

- From August 1, 2023 to September 15, 2023, in Ohio, 41 inspections were initiated due to an AMPUTATION – which must be reported to OSHA by phone or internet w/i 24 hours
  - Cincy: 7; Cleveland: 17; Columbus 8; Toledo 9
  - 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 – **have a written 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



## Recent OSHRC and Court Decisions

- **AKM LLC v. Secretary of Labor** (2012) – adopted by OSHA May 3, 2017
  - Statute of Limitations for Recordkeeping Violations: 6 months versus OSHA’s 5 years for records at that time under a “continuing violation”; OSHA finally accepted the Court’s ruling on May 3, 2017.
  - OSHA will still attempt to use a “continuing violation” analysis; watch for it in Process Safety Management cases like *Delek Refining*, in which the *Court disallowed the Sec’y’s arguments based on the definition of “occurrence.”*
- **Allstates Refractory Contractors** (2023 – 6<sup>th</sup> Cir.)
  - Rejected argument that Congress had given OSHA unconstitutional power to regulate private business virtually without limit.
  - Unclear if Supreme Court will take this case
- **Doe v. Scalia** (2023 – 3<sup>rd</sup> Cir.)
  - Workers at PA food plant alleged COVID-19 exposures not controlled by the employer; OSHA inspected and found no violation; workers sued under an “imminent danger” theory to compel action; Court ruled lacked jurisdiction to force the employer or OSHA

## *Walmart, Inc. – OSHRC 2023 – Distribution – Material Handling*

- Walmart received citation for violating 1910.176(b) after employee was injured by falling pallets of merchandise in NY distribution center
- The Secretary of Labor successfully established three elements to prove Walmart's violation:
  - The managers were aware of the pallets' propensity to topple when stacked in the violative manner.
  - The employee's injuries showed that workers were actually exposed to the dangerous conditions.
  - The managers had actual knowledge of the violative condition because the injured employee informed the managers before the injurious incident that merchandise had fallen
- Citation affirmed



## ***OSHRC and Court Decisions - Consider***

- ***Wayne Farms, LLC*** (OSHRC 2020): **Machine Guarding citation vacated**
  - Machine guarding citation vacated. Employee warned before the injury.
  - Employee's act of reaching into the moving parts of the hopper located 24 inches below the grate was the intentional, idiosyncratic behavior of only one employee.
- ***Angel Brothers Enterprises*** (OSHRC 2020): **Willful for lack of trench box**
  - Defense rejected where no effective enforcement of its rules.
  - Employer failed to discipline employees previously.
  - Willful classification upheld – foreman knowingly disobeyed instructions to install a trench box the day before the incident and the foreman's state of mind was imputed to the employer.
- ***TNT Crane & Rigging*** (2020 – 5<sup>th</sup> Cir.) – **Crane accident**
  - Where injury resulted when a crane tipped over, employer failed to establish implied defense of unpreventable employee misconduct because employer's "work rules were inadequate to prevent the violation."

## *LOTO and Machine Guarding Case*

- **Louisiana-Pacific** (ALJ 07/21/2023) – not a final order of OSHRC
  - Employee working near a conveyor cleaning up trim when he squatted and lost his balance, then grabbed the in-running nip point of the conveyor and injured his hand and arm.
  - OSHA cited under the machine guarding standard 1910.212(a)(1)
  - ALJ analyzed the location of the in-running nip point, and found zone of danger limited
  - Using that limited zone of danger, the ALJ then found that since the nip was low to the ground and four inches within the brackets of the conveyor, **it would not be predictable that an employee** would put his hand in that area, especially with the uncontested training not to do so, and not to reach down at all, use and availability of special tools, and given employee's admission that he would not reach anywhere on the machine without locking out the equipment.
  - ALJ considered knowledge of employer and customs in the industry
  - Characterized 1910.212 as a **performance standard** and **vacated citation**
  - Will not work when there is a specific standard, i.e. mechanical power presses

## *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.



## *Implications for Different Industries – OSHA will evaluate whether each employer met its responsibilities according to the category*

- Manufacturing – use of temporary and contract labor; contractors working in the plant revising the line, etc. – **consider Ohio WC VSSR against host employer before start**
- Construction – often many coming and going with materials and different crafts and laborers participating – who is a supervisor of whom?
- Retail – Millions in penalties for blocked exits and improperly stored loads – vendors control?
- Healthcare – numerous contractors coming and going
- Respiratory Protection, Lockout/Tagout, Process Safety Management: make sure contractors are trained
- Workers' Compensation – in all industries, making sure that all vendors' WC certificates are still valid by checking the Ohio BWC Employer lookup

## *Labor Entities/ Contractors on Your Site*

1. Regular general safety/indemnification provisions insufficient: specific contract language is needed to assign responsibilities and perhaps avoid joint employer claims – consider VSSR host employer language
2. Assess whether the contractor's safety program is sufficient [also WH, EEOC]
3. Verify that contractor's employees are trained to operate the equipment- do not assume – even train contractors' employees.
4. Have your Team trained and ready as to roles in case of compliance inspection by OSHA and take contractors into account.
5. Consult knowledgeable OSHA counsel to make sure you have taken into account all considerations regarding contractors' employees
6. Insurance does not cover OSHA Citations and Defense

Suggestions: reserve funds by estimating what violations might cost; consider bringing in Ohio BWC's OSHA On-Site Consultation Program; monetize potential violations

## ***OSHA National Emphasis Programs (NEP)***

- **Combustible Dust** Instr. CPL 03-00-008 - [Revised Combustible Dust NEP](#) - 01/30/2023
- **Coronavirus (COVID-19)** - DIR 2021-03(CPL 03) - [Revised NEP – Coronavirus Disease 2019 \(COVID-19\)](#) - 07/07/2021
- **Fall Prevention/Protection** Instr. - CPL 03-00-025 - [NEP - Falls](#) - 05/01/2023
- **Hazardous Machinery** Instr. - CPL 03-00-022 - [NEP on Amputations in Manufacturing Industries](#) - 12/10/2019
- **Heat** Instr. - CPL 03-00-024 - [NEP – Outdoor and Indoor Heat-Related Hazards](#) - 04/08/2022
- **Hexavalent Chromium** Instr. - CPL 02-02-076 - [National Emphasis Program - Hexavalent Chromium](#) - 02/23/2010
- **Lead** - Instr. - CPL 03-00-009 - [OSHA Instruction; NEP-Lead](#) - 08/14/2008
- **Primary Metal Industries** Instr. - CPL 03-00-018 - [NEP - Primary Metal Industries](#) - 10/20/2014
- **Process Safety Management (PSM) Instr.** - CPL 03-00-021 - [PSM Covered Chemical Fac. NEP](#) - 01/17/2017
- **Shipbreaking** Instr. - CPL 03-00-020 - [\(NEP\) on Shipbreaking](#) - 03/07/2016
- **Silica, Crystalline** Instr. - CPL 03-00-023 - [NEP – Respirable Crystalline Silica](#) - 02/04/2020
- **Trenching and Excavation** Instr. CPL 02-00-161 - [NEP on Trenching and Excavation](#) - 10/01/2018
- **Warehousing and Distribution Center Operations** Instr. - CPL 03-00-026 - [NEP on Warehousing and Distribution Center Op.](#) - 07/13/2023
- MORE Site-Specific Targeted inspections and Construction Targeted inspections than noted in the past in Ohio

## ***OSHA Regional and Local Emphasis Programs – Region V***

- IL, OH, IN, MN, WI, M\*
- CPL 04-00 (LEP 008) - [Emphasis Program for Fall Hazards in Construction and General Industry](#)
- CPL 04-00 (LEP 025) - [Emphasis Program for Federal Agencies](#)
- CPL 04-00 (LEP-100) - [Emphasis Program for Maritime Industries](#)
- CPL 04-05-2302 - [Local Emphasis Program](#) - Building Renovation, Rehabilitation and Demolition
- CPL 04-05-2304 - [Local Emphasis Program for the Wood Pallet Manufacturing Industry](#)
- CPL 04-05-2202 - [Local Emphasis Program in IL and OH for Food Manufacturing Industry](#)
- CPL 04-05-2201 - [Local Emphasis Program in WI for Food Manufacturing Industry](#)
- CPL 04-05-2303 - [Local Emphasis Program Local Emphasis Program for High Rise Building Construction Inspections in Chicago, Illinois](#)
- CPL 04-00-27 - [Regional Emphasis Program \(REP\) for Exposure to Noise Hazards in the Workplace](#)
- CPL 04-05-2301 - [Regional Emphasis Program for Grain Handling Facilities](#)
- CPL 04-05-2305 - [Regional Emphasis Program for Powered Industrial Vehicles](#)
- CPL 04-00-028 - [Regional Emphasis Program for Transportation Tank Cleaning Operations](#)

## *Compliance Points to Mitigate Exposure*

- 1) Watch your own WC claims for potential VSSR claims within one year; check on the status of any OSHA investigations – 6 months to issue citations
- 2) Review the sources of your claims every six months especially using the OSHA 300; work with EHS to reduce substantially any hazard causing those claims
- 3) **Prevent misconduct** that can be injuries to employees – bypassing interlocks
- 4) Urge EHS personnel to review OSHA required written programs now; urge them to advocate for disciplining employees for safety violations; renew training often
- 5) Lockout/Tagout programs should be accompanied by a Machine Guarding written program even though it is not required: when training occurs, it will occur on both; discipline on the MG Program





**John Keeling**  
**Benchmark Safety, Health and  
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## *Respiratory Protection – General Industry*

- Applicability
  - Non-Routine Activities with excessive exposure potential
  - Jobs where there is no Feasible Engineering or Administrative Control
- Citation Experience
  - No periodic review of the job for new Engineering or Administrative Controls
  - Medical evaluations up to date
  - Annual Fit Test
  - If RP failure occurs – Worker must leave exposure area
  - Repairs, Cleaning, Storage



## *Hazard Communication*

1. Is SDS Current?
2. Have there been Maintenance or Process Changes
3. Online services periodically assessed to verify content
4. Consider annual instruction on Access to SDS and SDS interpretation
5. Language limitations





## ***1910 Subpart Z – Specific Chemicals Asbestos (1001) to Ionizing Radiation (1096)***

1. Periodic IH Assessment to Determine Applicability
2. Process or Equipment changes reviewed for Subpart Z exposure potentials
3. IH Sampling Lapses if exposures are above the Action Level
4. New or transferred Personnel Training
5. Documentation



QUESTIONS?



## *Disclaimer*

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### 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



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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.

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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