

***LOCKOUT/TAGOUT and
MACHINE GUARDING
WORKSHOP
SUSTAINABILITY & EHS SYMPOSIUM***

Presented by: William J. Wahoff, Esq.
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And

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Presenters



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William J. Wahoff



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- 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*
- Past Chair of the Ohio Bar WC Committee and Board-Certified in Workers' Compensation
- Licensed in Ohio and Texas

Presenter

David Arthur



“David”

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- Certified Safety Professional
- Ohio Adult Educator Certificate Holder
- Former OSHA-Authorized 10- & 30-Hour General Industry Course Trainer
- Past Chairman Springfield-Clark County Safety Council (*two terms*)
- Former USAF Technical Training Instructor & USAF Mishap Investigation (non-aircraft) Course Graduate
- Previous National/Local HAZ Waste/HAZ Materials Conference Presenter
- Past Curriculum Developer and Project Manager, University of Findlay’s ERTC
- BS Environmental Health (*Boise State Univ*)
 - AAS Safety (*CCAF*)
 - AAS Instructional Technology (*CCAF*)

Questions on Workshop Scenario

- What would good reasons be for GWB to have a written machine guarding program in addition to its required written LOTO program?
 - Why is it important that GWB's machines fall under the general 1910.212("212") Standard?
 - What are sources for GWB to use to comply with 212?
- What would be the advantages of having the LOTO procedures posted on each machine?
- What are the good reasons to have the MG procedures and SOPs with safety items posted on each machine?
- How would you have handled Conn's earlier violation differently?
- What are the advantages of the daily walks by both the management team and separately by the production supervisors?

Page 2 - Questions on Workshop Scenario

- Have you ever had an employee do something dangerous “trying to help the company”?
 - Was the discipline of termination appropriate in your view?
 - What do you think about the apron length/gap that allowed the wiry Conn to reach up underneath?
- Do you think GWB needed to report the amputation to OSHA within 24 hours?
- How would you have responded to the OSHA rapid response letter?
- How would you have handled the Union official’s attendance of the inspection with the Compliance Officer? Assuming the new Walkaround Rule had been issued?
- What should be done about OSHA issuing non-grouped instance-by-instance citations?
- Should the employer assert the Employee Misconduct Defense in a contest?



Increased Penalties and New Initiatives in 2024

- Increased Serious and Other-Than-Serious penalty amounts for 2024 to \$16,131 per violation.
- Increased Willful and Repeat penalty amounts for 2024 to \$161,323 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 that apply in 2024

- 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
 - \$\$\$\$\$\$
- Became Effective March 26, 2023



Control of Hazardous Energy LO/TO and Machine Guarding



- 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 since 01/01/2015
 - 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

OSHA Enforcement Environment – LOTO-MG Examples

LOTO and MG No. 3 and 5 on GI Top Ten

- LO/TO – 2023 - 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
- Amp. – 1/24 LOTO/MG – OH -- Auto carpet mfg. repeats - \$234,376 & SVEP!
- Amp. – 01/24 – OH – MG/LOTO – SVEP! Musical Instr. Mfg. - \$273,447
- Amp. – MG, LO/TO – 02/24 – Ohio chicken processing plant - \$393,000
- Amp. – LOTO – New Jersey – 03/24 – Frozen Food Mfg. \$551,719 (history of similar injuries)

Employee Misconduct Defense



- 1) Employer had a safety rule or procedure
 - 2) Employees were trained on the safety rule or procedure
 - 3) Employer enforced the establishment safety rules and procedures with discipline
 - 4) Employer actively sought to discover violations of the safety rules and procedures
-

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



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 liability of 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, (Machine Guarding), 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

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 cause 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



QUESTIONS?



Disclaimer

These materials are public information and have been prepared solely for educational purposes to contribute to the understanding OSHA and Health and Safety 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.

LOTO – MG WORKSHOP L SCENARIO

Don is an hourly employee hired by GWB, a non-union employer, two years ago. When he was hired, he was trained as an affected employee under the Lockout/Tagout Program of the employer, GWB. GWB has a written machine guarding program, which is not required by OSHA standards. GWB has no mechanical power presses, woodworking machinery or other large machines with specific standards. GWB has press brakes, hydraulic presses and other equipment falling under the general machine guarding standard, 1910.212. GWB has the LOTO procedures posted on each machine. Identical machines have the same procedures, but each machine has the posting. In addition, GWB has specific machine guarding procedures posted on each machine in compliance with its non-OSHA-required machine guarding written program. Both the LOTO and the machine guarding procedures are reviewed and evaluated annually in accordance with 1910.147 for LOTO, and a similar internal requirement for the machine guarding program. Training of the maintenance personnel, the authorized employees, and affected and other employees, is conducted in compliance with 1910.147. Also, at each machine, standard operating procedures with safety rules and safety procedures incorporated directly into those standard operating procedures. All such programs and procedures require operators to call in maintenance if an upset condition or malfunction occurs. Don has all of those procedures at his machine and he has reviewed them repeatedly.

Don, an operator, and an affected employee under 147, was caught using a magnet to defeat an interlocked door on a machine 8 months ago. He said he did it to increase his own production numbers and keep his supervisor happy. Since GWB has a machine guarding written program and that program specifically prohibits the reaching around, defeating through other means, or other avoidance of a guard, he was disciplined under the machine guarding written program (LOTO did not apply) by a one-day unpaid suspension in accordance with GWB's written progressive disciplinary policy, which generally provides for a written warning at the first step, suspension as the second step, and termination at the third step. However, it also provides that, for a more serious infraction, the suspension or termination can be imposed on the first infraction. Because using a magnet to defeat a safety device is particularly willful and dangerous, he was given the suspension. Then a stand down occurred to check all of the machines for safety-defeating measures. Additional training occurred illustrating why defeating or removing guards or safety devices is not only against the programs and subject to significant discipline for violations, but could result in amputation, crushing, other injuries or death.

GWB has a procedure in which the plant manager, production superintendent and the EHS manager take a “Gemba Walk” every day to see how the employees are doing, to evaluate the effectiveness of production procedures, and to make sure safety procedures are being followed. Also, that Team evaluates the effectiveness of supervisors during the Gemba Walk. Each day supervisors are required, in the morning and in the afternoon, to do a safety and health walk themselves, focusing on whether the hourly employees like Don are following their safety training. All supervisors not only have the OSHA-Authorized General Industry 30-hour safety card issued by an OSHA-Authorized GI Trainer, but also have received the OSHA 511 training on the General Industry Standards. This is a big investment by the Company but has advantages since the supervisors have knowledge to evaluate conditions and the performance of employees. Both the Gemba Walk Team and the production supervisors document their observations and actions to correct in a ledger book each day. Those books are then put on the electronic records. The data is processed, and frequently observed safety and health issues are then the focus of a punch list for correction, and training as appropriate to the issue. Discipline on the daily observations is avoided if possible so that discussions can occur without undue anxiety. However, if a willful or particularly dangerous condition is observed then discipline can be imposed. Suggestions of employees are taken seriously, documented, and followed up upon in a weekly-updated action list.

Yesterday, Don was walking on his way to his workstation without detour or visiting with other employees. On his usual route there is a conveyor system with rollers that appeared to him to be jammed. When he saw the jam, he impulsively decided to help by trying to unjam it. When he could not do it by using his hand on the surface of the rollers, he reached underneath by kneeling down and placing his hand and arm up underneath the guard apron, as there was a 6-inch gap between the floor and the bottom of the guarding apron so the floor can be cleaned nightly. Unfortunately, there was a sharp edge created by the jammed condition and when he pushed to free it, his right index finger was cut right above the bone without contacting the finger bone. He had just trimmed his nail short that morning at home, so his nail was not cut either. He was bleeding, and a portion of the end of his finger was on the floor underneath the conveyor. He yelled, and help quickly came, he was rushed to the nearby hospital. The finger part was iced and re-attached by a very skillful hand surgeon. A workers’ compensation claim was initiated by the employer, bills were paid, and his pay was continued pending potential temporary total disability. An immediate investigation was conducted after the delivery of the employee to the squad, witness statements

were taken, photographs and video were also taken to document the conditions. At the point in the conveyor line at which Don was injured, there were no LOTO, MG or SOPs present. They were at the beginning of the conveyor line. There were also no warning stickers or any other notices that here was a danger, other than the presence of the safety apron. The safety apron was not labeled as a safety apron.

At that point, since no such event had ever occurred at the plant, and the management was quite frankly shocked and felt terrible about the incident, they needed help. Management wanted to make sure they were required to report the situation to OSHA before they make the on-line or telephone report within 24 hours as required by the rule. They were not sure if this qualified as an amputation under that rule.

Also, if they did report it after determining it was required, they wondered whether they could discipline the employee. If OSHA did cite the company, they wondered what defenses they might have and what were the limitations. They were very concerned about Don, but they were very displeased at his impulsiveness however well intentioned in this case. Management debated internally, with some saying he should have known from the notices on his own machine and the extensive training, etc., that he was not to reach up under anything, and should have contacted maintenance instead of taking measures himself. Plus, he was in an area on his way to his workstation, not in an area in which he had been trained.

The EHS manager reviewed the amputation rule and concluded that GWB needed to report it to OSHA within the 24 hours. He used the on-line reporting tool so that there would be a specific record of what was reported to OSHA and when, rather than a less certain phone call. While GWB would honor the workers' compensation claim, GWB made the difficult decision to terminate Don's employment since GWB viewed this as a second very serious violation of the machine guarding program. The EHS manager expressed concern about the decision due to the lack of warnings, signage, etc., and the potential for OSHA citations, Ohio VSSR, and intentional tort lawsuits, for which there is no insurance.

OSHA sent a rapid response letter to GWB three days after the report of the amputation to respond in five days. GWB timely responded to OSHA showing a temporary barrier along that conveyor with signage until a decision could be made about the length of the apron considering the need for housekeeping. The Assistant Area Director reviewed the response and decided that an inspection should occur. An OSHA Compliance Safety and Health Officer (CSHO) and a local Union safety official with years of experience in machine guarding and LOTO appeared and the

CSHO presented his credentials. The employer gave consent without requesting a warrant to give a written justification for a union safety official's presence in the investigation. GWB did require the safety official to sign the typical vendor confidentiality agreement, but the CSHO refused, indicating GWB would need to identify trade secrets if GWB wanted to protect that information.

The CSHO investigated and interviewed hourly employees. The EHS Manager sat in on interviews of supervisors. During the closing conference, the CSHO noted general agreement by all witnesses that the conveyor area with the apron, which he called "inadequate" had never been labeled as a danger, and had never been the subject of safety training, other than general training about reaching under or around. The Union safety official did not speak directly, but whispered to the relatively new CSHO several times. The CSHO said GWB would likely receive citations under LOTO 1910.147, Machine Guarding 1910.212, and the training provisions of those and other standards, but he would have to take this back to the Office for review, and would need to review the further documents he had requested. He said they had six months to decide on citations.

About five months later, citations were issued under LOTO and Machine Guarding. There were five similar stretches of conveyors in that area, and each was cited for the maximum serious citation for both LOTO and Machine Guarding at \$16,131 each. Since there were citations on each conveyor for failure to have an adequate LOTO program, failure to train and failure to perform the annual evaluations of those parts of the conveyors, there were three citations for LOTO for each conveyor charged at the maximum. There were two citations under the Machine Guarding general standard, 1910.212, for failure to adequately guard "to protect other employees in the machine area" from rotating parts, stating that the entire length of the conveyor was the point of operation, and failure to train "other employees in the area" on the hazards of the conveyors. Five items per conveyor, times five conveyors, equaled 25 items at \$16,131, each, for total proposed penalties of \$403,275. OSHA issued a press release picked up by the local papers. GWB started getting calls from its customers about its safety records. GWB was required to report to a vendor website the citations.

GWB officials complained at the informal conference that GWB officials were told by a local attorney that the recently retired Area Director would have grouped any violations and probably this would be about \$48,393. The new Area Director pointed out OSHA's new policy regarding encouraging non-grouping of items, as well as the National Emphasis Program to prevent amputations, and told the GWB Officials that the Solicitors' Office, who are the lawyers representing OSHA, have

“plenty of resources now” so he was not inclined to withdraw any of the citations, nor reduce the proposed penalties by more than 10%, as an example to other employers. He agreed that generally their safety program was very good, but in this case it was inadequate and failed to prevent the employee’s injury. He said any employee misconduct defense is legal and he would have to let the government lawyers sort that out.



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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

Biographical Information

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Mr. Arthur began his HS&E career in 1982 when, as a young Air Force NCO, he took over a program that managed hazardous materials transportation by air. From that time, Mr. Arthur has worked in the government as well as private industry providing environmental, health, and safety support in the remediation, manufacturing, medical, consulting, and national defense sectors. Skilled in both project and individual task management, Mr. Arthur is now the corporate Health and Safety Director for EQM, Inc., an Arctic Slope Regional Corporation subsidiary. He holds a BS in Environmental Health, an additional AAS degree in Safety and is a Certified Safety Professional (CSP) from the Board of Certified Safety Professionals. Mr. Arthur also holds another AAS degree in Instructional Technology and was a USAF Technical Training Instructor during his tenure with the Air Force.