

Ogletree
Deakins

WORKPLACE SAFETY
SYMPOSIUM

2023

Promoting Safety Excellence

**PROGRAM
AGENDA**



HILTON AUSTIN

DECEMBER 6-8, 2023

WEDNESDAY, DECEMBER 6, 2023

Noon – 1:30 p.m.

Registration

1:30 – 1:45 p.m.

Welcome Remarks

Speakers: Eric E. Hobbs (Milwaukee) • Erika L. Leonard (Austin)

1:45 – 2:45 p.m.

Introduction to Our “Real” OSHA Trial: You Be the Judge!

Join us for an introduction to the interactive closing session on Friday, *Our “Real” OSHA Trial: You Be the Judge!* This immersive OSHA trial experience will feature witnesses, evidence, and attorneys arguing their case—and will include asking the audience to review the legal issues and employer defenses in order to decide whether the citations should be vacated or affirmed.

Speakers: Melissa A. Bailey (Washington, D.C.) • Karen F. Tynan (Sacramento)

2:45 – 3:15 p.m.

Break

3:15 – 4:15 p.m.

BREAKOUT SESSIONS—SERIES 1

1. OSHA 101: A Primer for Employers

This session is designed to provide employers with a strong foundation of OSHA knowledge, including how the agency operates and conducts inspections, how the settlement process works, how to contest citations, and more.

Speakers: Eric E. Hobbs (Milwaukee) • Jeff T. Leslie (Dallas)

2. Drug Testing—From the Basics to Incidents and Accidents

Testing for drugs can be a nuanced and tricky process given employee protections and stringent protocols. In this session, the speakers will use a variety of drug testing and screening scenarios to work through the myriad issues and provide best practices and strategies.

Speakers: Michael Clarkson (Boston) • Nina French, *President of Employer Solutions*, Hound Labs • John D. Surma (Houston)

3. OSHA State Plans: Tips for Multistate Compliance and Avoiding Pitfalls

Multistate employers that deal with state plans on a regular basis know that some state plans have more stringent reporting and documentation requirements, or specific employee involvement obligations. The speakers will hone in on best practices for dealing with state plans and how to avoid the legal pitfalls.

Speakers: Kathryn P. Fletcher (Seattle) • Michael Rubin (Raleigh/Phoenix)
Jennifer Yanni (Orange County)

4:15 – 4:30 p.m.

Break

4:30 – 5:30 p.m.

BREAKOUT SESSIONS—SERIES 2

1. Recordkeeping and Reporting: A Strong Foundation for Workplace Safety

If you interact with or are responsible for OSHA logs of workplace injuries and illnesses, you know that OSHA imposes on employers a myriad of very specific requirements that are continually evolving. Join this session for the latest updates, trends, and developments on OSHA recordkeeping and documentation requirements.

Speakers: Thomas R. Chibnall (St. Louis) • William S. Rutchow (Nashville)

2. Navigating the Intersection of Unions and Workplace Safety

Employers with unionized workforces can encounter some tricky issues during OSHA inspections and litigation. In this session, the speakers will discuss key topics related to organized labor and workplace safety, including the latest union tactics and best practices for those who work with labor unions in their workplace.

Speakers: Rodolfo R. (Fito) Agraz (Dallas/Raleigh) • Frank D. Davis (Dallas)

3. Drafting Effective Safety Policies to Set Your Company Up for Success

In addition to accurately reflecting the safety requirements, practices, and procedures for your workplace, the best safety program documents also reflect your company's safety culture. Join this session to learn how to capitalize on the opportunity to communicate your safety goals and ideals—with messaging that will resonate with your workforce.

Speakers: Jaslyn W. Johnson (Atlanta) • David B. Walston (Birmingham)

6:00 – 9:00 p.m.

Welcome Reception and Dinner

THURSDAY, DECEMBER 7, 2023

7:30 – 8:30 a.m.

Breakfast

8:00 a.m. – 5:00 p.m.

Registration

8:30 – 9:30 a.m.

The Latest on Workplace Safety Legislation, Policy, and Enforcement

In this session, our Washington, D.C., team brings their inside knowledge of plans for policy, rulemaking, and enforcement—along with a sprinkle of political intelligence. Join us for critical insights to help prepare your workplace for 2024 and beyond.

Moderator: Eric E. Hobbs (Milwaukee)

Speakers: Melissa A. Bailey (Washington, D.C.) • James J. Plunkett (Washington, D.C.)

9:30 – 10:30 a.m.

The Top 10 Workplace Safety Mistakes Employers Make (But Don't Have To)

Employers need to know what they can and cannot do during inspections, but they also need to know what the law allows OSHA to do (and not do). The intersection of these two areas can result in potential missteps during inspections. This session, presented by three OSHA lawyers who have collectively handled thousands of inspections with federal OSHA, Cal/OSHA, and many other state plans, will help employers prepare for and handle OSHA inspections.

Moderator: R. Lance Witcher (St. Louis)

Speakers: Kevin D. Bland (Orange County) • Dee Anna D. Hays (Tampa)
Phillip B. Russell (Tampa)

10:30 – 10:45 a.m.

Break



10:45 a.m. – Noon

Workplace Violence: More Than Just Headlines

Workplace violence is a growing concern across the country, as evidenced by numerous recent tragic incidents in the news. These events may leave employers wondering about their roles and obligations under workplace safety laws with regard to workplace violence prevention. This session will cover the nuts and bolts of state and federal workplace safety obligations for preventing workplace violence, and will provide valuable insights, practical tools, and actionable strategies to enhance your understanding of workplace violence prevention.

Moderator: Karen F. Tynan (Sacramento)

Speakers: Dennis A. Davis, Ph.D. (Torrance) • Erika L. Leonard (Austin)
Robert C. Rodriguez (Sacramento)

Noon – 1:00 p.m.

Networking Lunch

1:00 – 2:00 p.m.

BREAKOUT SESSION—SERIES 3

1. Employer Expectations of Management and Supervisors Before, During, and After an OSHA Inspection

Environmental, health, and safety professionals are keenly focused on all aspects of safety within their organizations—and frontline managers and supervisors are critical team members responsible for the implementation and enforcement of safety initiatives in their day-to-day operations. This session will examine the employer's expectations of management and supervisors in an OSHA inspection and offer best practices to ensure these expectations are met and exceeded, while also fostering a positive and proactive safety culture.

Speakers: Melissa A. Bailey (Washington, D.C.) • Hal A. Shillingstad (Minneapolis)
John D. Surma (Houston)

2. By the Numbers: Using OSHA Data and DOL Statistics to Improve Your Safety Program

The U.S. Department of Labor (DOL) maintains a voluminous amount of workplace safety data—and our workplace safety group analyzes that data by industry, state, accident type, inspections, citation type, and penalties. Learn about what helpful data is out there and how to use this data to enhance your safety programs and risk management.

Speakers: Timothy Fox (Los Angeles) • Karen F. Tynan (Sacramento)

3. OSHA Rulemaking and 2024 Expectations

Understanding how OSHA regulations happen and how employers can impact the rulemaking process is key for companies and their workplace safety programs. This session will examine federal and select state rulemaking processes and provide tips for how to prepare your safety program for new and pending regulations.

Speakers: Kevin D. Bland (Orange County)
J. Davis Jenkins (Washington, D.C./Charleston) • Dean F. Kelley (Milwaukee)

2:00 – 2:15 p.m.

Break



2:15 – 3:15 p.m.

BREAKOUT SESSION—SERIES 4

1. **The Heat Is On: An Interactive Session on Managing Heat Illness Incidents**

Do you know how to best handle a heat illness incident? In this collaborative and interactive session, attendees will work closely with the presenters to analyze and execute heat illness procedures in a mock heat illness scenario.

Speakers: Melissa A. Bailey (Washington, D.C.) • Thomas R. Chibnall (St. Louis)
Wayne E. Pinkstone (Philadelphia)

2. **All the Defenses (Plus the Ones Your Mother Didn't Tell You About)**

Once an employer receives a citation, the clock starts ticking. Employers that contest citations face the often daunting task of alleging each and every legal argument at the very outset of a case. In this session, the speakers will explore the various defenses that employers can utilize when defending against citations, discuss how not all defenses are created equal, and explain why the road to winning may sometimes be the one less traveled—especially when it comes to often overlooked defenses.

Speakers: Michael Clarkson (Boston) • Dee Anna D. Hays (Tampa)
Jennifer Yanni (Orange County)

3. **Just Say “No” (When You Can): Employer Rights in Inspections**

What are employers' rights during an OSHA inspection? How can those rights and responsibilities be balanced with maintaining positive interactions with an OSHA inspector? This session will address these important issues and how to communicate honestly and effectively about those rights.

Speakers: Michael Rubin (Raleigh/Phoenix) • Kenneth B. Siepman (Indianapolis)
David B. Walston (Birmingham)

3:15 – 3:30 p.m.

Break

3:30 – 4:30 p.m.

The Tip of the Iceberg: How to Prevent Workplace Safety Issues From Exposing Employers to Liability Under Other Laws

Workplace safety injuries, serious accidents, and fatalities can lead to a variety of additional complex legal issues, including leaves of absence and accommodations for injured workers. Notwithstanding workers' compensation exclusivity, employers can unexpectedly be involved in civil lawsuits related to equipment, premises, or indemnification. This session will discuss these complex subjects and how to best manage the risks.

Moderator: Erika L. Leonard (Austin)

Speakers: Scott W. Gedeon (Cleveland) • R. Lance Witcher (St. Louis)



4:30 – 5:45 p.m.

Innovative Informal Conference Strategies: Maximizing the Opportunity for Early Case Resolution

The informal conference provides employers with an opportunity to resolve OSHA citations immediately after they are issued, avoiding lengthy and expensive litigation. Even where citations cannot be resolved at the informal conference, they can still be a useful tool for employers to gain an understanding of OSHA's factual and legal basis for the citations, evaluate the strength of OSHA's case, and determine likely parameters for early resolution. This session will explore strategies and best practices related to preparing for the informal conference, conveying complex arguments, taking advantage of tight deadlines, and invoking unique and alternative tactics to achieve success.

Moderator: Kenneth B. Siepman (Indianapolis)
Speakers: Jaslyn W. Johnson (Atlanta) • Michael D. McKnight (Raleigh)
Hal A. Shillingstad (Minneapolis)

6:30 – 9:30 p.m.

Celebration at Cedar Door Patio Bar and Grill!

Join us for a relaxing reception and dinner at one of Austin's favorite local restaurants.



FRIDAY, DECEMBER 8, 2023

8:00 – 8:30 a.m.

Breakfast

8:30 – 11:00 a.m.

Our "Real" OSHA Trial: You Be the Judge!

Don't miss this interactive closing session with witnesses, evidence, and attorneys arguing their case. Attendees will hear the evidence and decide whether the citations should be vacated or affirmed. Audience participation is a must for this fun and informative session!

Speakers: Melissa A. Bailey (Washington, D.C.) • Thomas R. Chibnall (St. Louis)
Kathryn P. Fletcher (Seattle) • Jaslyn W. Johnson (Atlanta)
Dean F. Kelley (Milwaukee) • Robert C. Rodriguez (Sacramento)
Michael Rubin (Raleigh/Phoenix) • Hal A. Shillingstad (Minneapolis)
John D. Surma (Houston) • Karen F. Tynan (Sacramento)
Jennifer Yanni (Orange County)

11:00 – 11:15 a.m.

Closing Remarks

Speaker: Eric E. Hobbs (Milwaukee)



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