

Ogletree
Deakins

WORKPLACE SAFETY SYMPOSIUM

MANAGING OSHA LIABILITY IN A DANGEROUS WORLD

2021

DECEMBER 2-4, 2021

THE ARIZONA BILTMORE • PHOENIX, ARIZONA

AGENDA



THURSDAY, DECEMBER 2, 2021

2:00 – 4:00 p.m.

PRE-CONFERENCE BONUS SESSIONS

1. OSHA 101: A PRIMER

This session is designed for attendees who want to confirm or supplement their baseline OSHA knowledge. In this session, the speakers will discuss agency operations, inspections, citations, settlement options and procedures, and the OSHA contest process. The speakers will also review the distinctions between federal OSHA and state OSHA plan procedures. Attendees will get a soup-to-nuts overview of what they need to know to deal with an OSHA issue when it arises, along with an ample opportunity to ask questions.

Speakers: Eric E. Hobbs (Milwaukee) and Hal A. Shillingstad (Minneapolis)

2. HEALTHCARE'S TOP OSHA ISSUES

The broad array of workplace safety issues healthcare employers face is formidable—and that was true before COVID-19 and the Delta variant. This session will address those issues and help prepare healthcare employers to rise to the challenge. While COVID-19 will be one topic of conversation, this session will not be focused only on the pandemic. Attendees will leave understanding the issues that are, and are likely to be, of greatest concern to healthcare employers and strategies to head them off or deal with them as they arise.

Speakers: Dee Anna D. Hays (Tampa) and Wayne E. Pinkstone (Philadelphia)

3. EFFECTIVELY HANDLING OSHA WALKAROUND INSPECTIONS, RAPID RESPONSE INVESTIGATIONS, AND REQUESTS FOR INFORMATION

Employers talk about OSHA inspections far more often than they have to go through one ... or go through an OSHA rapid response investigation or respond to an OSHA request for information. Are you ready to deal with any or all of those effectively if you have to face one next week? This session will dive into best practices for doing so and explore some of the possible twists and turns you might face in the process.

Speakers: Frank D. Davis (Dallas) and R. Lance Witcher (St. Louis)

4. WHAT'S NEW IN OSHA CONSTRUCTION ENFORCEMENT AND THE LAW

Stories of building collapses and fatalities in construction have peppered the media ever since the world began to awaken from its COVID-19 slumber. And the number of construction inspections and citations by OSHA and state OSHA plans is up. This session will focus on OSHA's "Top 10" cited standards in construction, developments in the law, and the best practices employers can follow to protect against citations, or even criminal prosecution, both before and during inspections and investigations. Attendees will leave this session better prepared to handle the addressed hazards and to respond in the event OSHA shows up at their doors.

Speakers: Kevin D. Bland (Orange County) and Phillip B. Russell (Tampa)

5:00 – 7:00 p.m.

REGISTRATION AND COCKTAIL RECEPTION



FRIDAY, DECEMBER 3, 2021

8:00 – 8:30 a.m. **REGISTRATION AND BREAKFAST**

8:30 – 8:45 a.m. **WELCOME AND OPENING REMARKS**

Speaker: Eric E. Hobbs (Milwaukee)

8:45 – 9:30 a.m. **THE WASHINGTON BUZZ: WHAT'S THE LATEST AS THE DUST SETTLES FROM THE 2020 ELECTIONS?**

No doubt, January 2021 ushered in a significant shift in the political winds in Washington, D.C., both in the White House and at the U.S. Capitol. What are those winds likely to mean for the U.S. Department of Labor (DOL) and, more specifically, OSHA? Our Washington, D.C., insider, Jim Plunkett, will address how the DOL and OSHA are likely to morph under the Biden administration in the near and not-so-near future.

Moderator: Melissa A. Bailey (Washington, D.C.)

Speaker: James J. Plunkett (Washington, D.C.)

9:30 – 10:30 a.m. **IT'S BEEN NEARLY SIX MONTHS: WHAT'S THE LATEST UNDER OSHA'S COVID-19 EMERGENCY TEMPORARY STANDARD FOR HEALTHCARE AND ITS GUIDANCE FOR NON-HEALTHCARE EMPLOYERS?**

OSHA published its COVID-19 Emergency Temporary Standard (ETS) on June 15, 2021. By the time of the Workplace Safety Symposium, we will be approaching its six-month anniversary, and such standards can remain in force for no more than six months. So what enforcement actions have been taken by OSHA under the COVID-19 ETS for healthcare and under its guidance for non-healthcare employers, and what is the likely future of the standard? The speakers will address those issues and more flowing from OSHA's activity during the pandemic.

Speakers: Dee Anna D. Hays (Tampa) and John F. Martin (Washington, D.C.)

10:30 – 11:00 a.m. **OSHA AND HEAT ILLNESS: HOW THE AGENCY APPROACHES IT AND WHAT THAT APPROACH MEANS FOR OSHA ENFORCEMENT UNDER THE GENERAL DUTY CLAUSE**

Stories of reported heat-related illnesses and fatalities in workplaces around the nation have popped up over and over in the media in the past several years. OSHA has taken note and elevated its enforcement focus on heat illness during what the agency views to be a critical national health hazard. But successful enforcement has proven difficult for OSHA, even as employers continue to struggle with addressing heat-related issues in their workplaces. So what is federal OSHA up to in this area? What does the law say about heat hazards? What are state OSHA plans doing, the same or differently, to address heat-induced illnesses? And what does all that activity tell us, if anything, about OSHA's more general approach to enforcement under the General Duty Clause?

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

11:00 – 11:30 a.m. **BREAK**

11:30 a.m. – 12:30 p.m. **FEDERAL OSHA AND THE MULTITUDE OF STATE OSHA PLANS: HOW CAN EMPLOYERS COMPLY WITH ALL THE REQUIREMENTS?**

Twenty-two states have their own OSHA plans, and 16 of those states have OSHA plans that apply to private sector employers. Especially for employers with operations in multiple jurisdictions, knowing what requirements need to be followed and where can be complicated. And employers that are considering opening operations in other jurisdictions should understand the safety and health compliance implications of such a move. This session will consider those issues and provide tips for employers facing the inevitable confusion of doing business in multiple jurisdictions to ensure, as best they can, that they are compliant across the board. The speakers will also share some dos and don'ts from their experiences to help navigate the unique processes, procedures, and priorities state OSHA plans can present.

Speakers: Karen F. Tynan (Sacramento) and Hal A. Shillingstad (Minneapolis)

FRIDAY, DECEMBER 3, 2021 (continued)

12:30 – 1:30 p.m. LUNCH AND SPECIAL ADDRESS: CONDUCTING EFFECTIVE SAFETY TRAINING OF EMPLOYEES IN A MULTI-GENERATIONAL ERA

Speaker: Dennis A. Davis, Ph.D. (Torrance)

1:30 – 2:00 p.m. BREAK

2:00 – 3:00 p.m. CONDUCTING INVESTIGATIONS AFTER AN INJURY WITHOUT DOING OSHA'S WORK FOR IT AND WITHOUT GIVING AWAY THE STORE

Sound safety practices require that employers do their best to figure out, after a safety incident, what happened and what can reasonably be done to prevent it from recurring. But employers want to avoid conducting incident investigations that result in OSHA demanding copies of the results and using them either as a road map to citations or as a substitute for the agency's own inspections. This session will cover how best to go about conducting incident investigations to avoid either of those results. The speakers also will address how best to involve non-English-speaking employees in the investigation process, whether they were a part of the incident or may be helpful in addressing risk mitigation.

Speakers: Kenneth B. Siepmann (Indianapolis) and John D. Surma (Houston)

3:00 – 4:00 p.m. HANDLING EMPLOYEE DISCIPLINE AND DISCHARGE ISSUES DURING AN OSHA INSPECTION

The federal Occupational Safety and Health Act and comparable state statutes prohibit discrimination and retaliation against employees for “protected” safety behavior. What is “protected” safety behavior? And how can an employer avoid violating the prohibition during the course of an OSHA inspection or after a near miss or injury incident? What if the employee who caused the incident by violating company policy also was interviewed by OSHA? Is it a good idea to discipline an injured employee who caused or contributed to the injury? If so, what should the timing of the disciplinary action be—as soon as possible, after the conclusion of OSHA's inspection (if any), or at some other time? This session will consider those questions and how employee discipline also factors into an employer's defenses to an OSHA citation.

Speakers: Frank D. Davis (Dallas) and R. Lance Witcher (St. Louis)

4:00 – 5:00 p.m. RESPONDING TO HIGH-STAKES DISASTERS: OSHA INSPECTIONS, EXPERT ASSISTANCE, AND MEDIA COVERAGE

Catastrophes can result in everything from worker injuries and employee fatalities to extensive property damage and bad public relations. Employers not only must be prepared for immediate on-site OSHA inspections, but also must take immediate steps to ensure site safety and crisis management, often using expert services. This session will address how employers can be better prepared if disaster strikes and how they should respond. Drawing from real cases, the speakers will consider strategies for handling the OSHA inspection, avoiding or minimizing the risk of a citation and other legal exposure, managing public relations, and using expert witnesses to combat citation and legal exposure, mitigate the risk of recurrence, and manage the media.

Speakers: Melissa A. Bailey (Washington, D.C.), David Fusco, *Associate Principal*, Thornton Tomasetti, and Phillip B. Russell (Tampa)

5:00 – 5:15 p.m. DAY ONE CLOSING REMARKS

Speaker: Eric E. Hobbs (Milwaukee)

SATURDAY, DECEMBER 4, 2021

8:00 – 8:45 a.m. **BREAKFAST**

8:45 – 9:00 a.m. **DAY TWO KICKOFF**

9:00 – 11:00 a.m. **GOING TO TRIAL IN AN OSHA CASE**

This session will offer an interactive opportunity for attendees to witness and participate in a mock OSHA hearing. Watch the way a trial typically goes—or at least should—and give input and react to the various stages of the proceeding. Attendees will learn the importance of the order of case presentation, witness selection, examination and cross-examination, and interaction with the other side and the judge, while still having fun in the process.

Speakers: Melissa A. Bailey (Washington, D.C.), Ursula L. Clemons (Orange County), Wayne E. Pinkstone (Philadelphia), Phillip B. Russell (Tampa), John D. Surma (Houston), and R. Lance Witcher (St. Louis)

11:00 – 11:15 a.m. **DAY TWO CLOSING REMARKS**

Speaker: Eric E. Hobbs (Milwaukee)



Atlanta
Austin
Berlin
Birmingham
Boston
Charleston
Charlotte
Chicago
Cleveland
Columbia
Dallas

Denver
Detroit (Metro)
Greenville
Houston
Indianapolis
Jackson
Kansas City
Las Vegas
London
Los Angeles
Memphis

Mexico City
Miami
Milwaukee
Minneapolis
Morristown
Nashville
New Orleans
New York
Oklahoma City
Orange County
Paris

Philadelphia
Phoenix
Pittsburgh
Portland (ME)
Portland (OR)
Raleigh
Richmond
Sacramento
San Antonio
San Diego
San Francisco

Seattle
St. Louis
St. Thomas
Stamford
Tampa
Toronto
Torrance
Tucson
Washington, D.C.

Ogletree
Deakins