

# WORKPLACE SAFETY SYMPOSIUM

MANAGING OSHA LIABILITY IN A DANGEROUS WORLD

DECEMBER 4-6, 2019 • JW MARRIOTT

PRESENTED BY Ogletree  
Deakins

NEW ORLEANS, LA



WEDNESDAY, DECEMBER 4, 2019

2:00 – 4:00 p.m.

## PRE-CONFERENCE BONUS SESSIONS

### OSHA 101: A PRIMER

This session is designed for attendees who want to round out their baseline OSHA knowledge. In this session, we will discuss how OSHA operates, how the agency conducts inspections, how the settlement process works, how to contest citations, and more. Attendees will get a comprehensive overview of what they need to know to deal with an OSHA issue when it arises. Attendees will also have ample opportunity to ask questions.

Speakers: William S. Rutchow (Nashville), Karen F. Tynan (Sacramento), Tom Pritchett, CSP,  
*Director of EHS & Compliance, Universal Recycling Technologies, LLC*

### THE HOTTEST OSHA TOPICS IN HEALTHCARE

Healthcare employers face a challenging array of workplace safety issues, to say the least. Our experienced panel will help healthcare employers address many of those issues, including the two most frequently cited areas—workplace violence and failure to report—as well as the rapidly developing issue of radiation exposure and other hot topics, such as bloodborne pathogens, recordkeeping, and infectious diseases.

Speakers: Valerie N. Butera (Detroit (Metro)), Elvige Cassard (New Orleans),  
Dee Anna D. Hays (Tampa)

### THE ART OF DRAFTING EFFECTIVE SAFETY POLICIES

Employers go to great lengths to train employees on their policies. But OSHA still issues citations because employees say they don't understand the policies! Help your company avoid such a citation by learning the techniques of concise policy writing to ensure employee understanding and compliance. The session will also focus on the most frequently cited standards and offer tips for simplifying your existing policies.

Speakers: John C. Artz (Pittsburgh), Frank D. Davis (Dallas), Shontell Powell (Atlanta)

### CONDUCTING PERIODIC INSPECTIONS UNDER THE LOCKOUT/TAGOUT STANDARD

Are your lockout/tagout periodic inspections fully compliant with OSHA requirements? The speakers will provide information that will assist you in assuring that your equipment, procedures, and authorized employees comply with OSHA's requirements under 29 CFR 1910.147(c)(6). This session will provide best practices to inspect ALL of your company's machine-specific procedures efficiently and ALL of your authorized employees.

Speakers: J. Carin Burford (Birmingham), Eric E. Hobbs (Milwaukee), Dean F. Kelley (Milwaukee)  
Robert D. Christiansen, *Corporate Manager Safety and Security,*  
Hormel Foods' Corporate Services

### CONSTRUCTING AND DECONSTRUCTING: WHAT'S NEW IN CONSTRUCTION ENFORCEMENT AND THE LAW?

Fatalities and catastrophic injuries on construction job sites continue to increase, along with aggressive enforcement by Federal OSHA and State Plans. This session will help attendees better understand OSHA's regulatory focus on trenching and excavation, silica, cranes and derricks, and other areas. The speakers will share best practices for handling OSHA's on-site inspection and investigation activities that are specific to construction job sites, including document requests, employee and supervisor interviews, and the involvement of third parties such as experts and law enforcement. The speakers will also discuss several high-profile construction cases, such as the Florida International University pedestrian bridge collapse, and explore the lessons learned from them. Attendees will leave this session better prepared to respond to OSHA inspections involving construction job sites.

Speakers: Kevin D. Bland (Orange County), Merritt B. Chastain, III (Houston),  
Mandy Kustra, *Safety Director, Ajax Paving Industries of Florida*  
Phillip B. Russell (Tampa)

5:00 – 7:00 p.m.

## REGISTRATION AND COCKTAIL RECEPTION

## THURSDAY, DECEMBER 5, 2019

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

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

**8:45 – 9:15 a.m. THE BELTWAY BUZZ: WHAT'S THE LATEST AS WE APPROACH THE 2020 ELECTIONS?**

The 2020 political races have commenced, and nowhere is this felt more acutely than in Washington, D.C. While policymakers on Capitol Hill fret over how each vote may affect their poll numbers, regulators in federal agencies are racing to tie up their respective agendas. The U.S. Department of Labor (DOL) and OSHA are no exception. Yet the recent spate of high-level personnel changes at the DOL is bound to have an impact on OSHA's regulatory plans and enforcement protocols. Join Ogletree Deakins' senior government relations counsel, Jim Plunkett, as he addresses how these political dynamics will impact the world of workplace safety in 2019 and beyond.

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

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

**9:15 – 10:00 a.m. OSHA'S USE AND MISUSE OF THE GENERAL DUTY CLAUSE: HOW TO AVOID AND COMBAT CITATIONS**

OSHA's General Duty Clause requires that each employer furnish to each of its employees a workplace that is "free from recognized hazards that are causing or likely to cause death or serious physical harm." While this requirement may seem straightforward, OSHA's interpretation and enforcement of this mandate can often be confounding and catch employers off guard, particularly following a workplace accident. This session will explore the latest enforcement trends and strategies for avoiding and defending against citations issued under the General Duty Clause, and discuss recent decisions by the Occupational Safety and Health Review Commission addressing heat stress and workplace violence.

Moderator: John F. Martin (Washington, D.C.)

Speakers: Melissa A. Bailey (Washington, D.C.), Michael D. McKnight (Raleigh)

**10:00 – 11:00 a.m. LOCKOUT/TAGOUT: THE MOST RECENT DEVELOPMENTS AND HOW TO TAKE ADVANTAGE OF THEM**

OSHA has been reconsidering its Lockout/Tagout Standard in light of modern technological advances and criticisms that it is out of date and unduly rigid. The speakers will discuss rulemaking developments, changes affecting the minor servicing exception, and conflicts in the case law as to the circumstances under which the Lockout/Tagout Standard even applies. They will also explore how employers might use these developments to their advantage.

Moderator: Eric E. Hobbs (Milwaukee)

Speakers: Dean F. Kelley (Milwaukee), Shontell Powell (Atlanta),  
Arthur G. Sapper (Washington, D.C.)

**11:00 – 11:30 a.m. BREAK**

**11:30 a.m. – 12:30 p.m. THE PATCHWORK OF OSHA PLANS: COMPARING FEDERAL OSHA AND STATE PLANS**

State Plan jurisdictions present unique issues and challenges for employers that are familiar with only Federal OSHA. Our panel of experienced State Plan practitioners will describe the key differences and similarities between Federal OSHA and State Plans. They will provide insight on key issues for employers with locations in both Federal OSHA and State Plan jurisdictions and how to comply with the different requirements, such as implementing safety programs, handling inspections, and appealing citations. The panel will also share some dos and don'ts from their experiences to help you navigate the unique processes, procedures, and priorities of State Plans.

Moderator: William S. Rutchow (Nashville)

Speakers: Valerie N. Butera (Detroit (Metro)), Sean Paisan (Orange County),  
Hal A. Shillingstad (Minneapolis)

**12:30 – 1:30 p.m. LUNCH AND SPECIAL PROGRAM: FROM OSHRC CHAIR TO AMAZON'S GLOBAL SAFETY LEADER: A PERSPECTIVE ON THE STATE OF WORKPLACE HEALTH AND SAFETY**

Our guest speaker will offer insights into the inner workings of OSHRC, as well as discuss Amazon's approach to safety and ways in which the company is innovating to create safer workplaces.

Speaker: Heather MacDougall, *Immediate Past Chair*, Occupational Safety and Health Review Commission; *Vice President, Worldwide, Workplace Health and Safety*, Amazon

**1:30 – 2:00 p.m. BREAK**



2:00 – 2:45 p.m.

### **OSHA ENFORCEMENT THROUGH THE LENS OF THE OPPOSITION**

There are two sides to every case. While hard to see at times, the government has its own motivations and its own stakeholders to satisfy. Unless we can see our case through OSHA's eyes and the eyes of its lawyers, prevailing will be difficult. On the other hand, knowing how OSHA and the Occupational Safety and Health Review Commission think can be invaluable in strategizing for settlement or trial. The speakers in this session are two former OSHA lawyers and a former attorney in the General Counsel's office for the Review Commission who will discuss: how the agencies view cases, including common defenses such as unpreventable employee misconduct; the internal approaches and impediments to settlement and trial; and how we can use what we know of their thinking to our advantage before and after contesting a citation.

Moderator: Phillip B. Russell (Tampa)

Speakers: J. Davis Jenkins (Washington, D.C.), Jaslyn W. Johnson (Atlanta), Matthew Linton, *Associate General Counsel, Space Operations, Lockheed Martin*

2:45 – 3:45 p.m.

### **THE UNPREVENTABLE EMPLOYEE MISCONDUCT DEFENSE: PREPARING TO PROVE IT**

Employers face challenges when attempting to persuade OSHA that a violation was the result of employee misconduct. When you raise this defense, the agency will scrutinize your safety program. What work rules do you have that specify the dos and don'ts of employees' jobs? How do you convey those rules to your employees? How effectively do you implement your rules? How do you ensure employees are following them? What actions do you take when an employee breaks one of the rules? And what if the offending employee is a supervisor—is the defense available? Join our panel for a discussion of best practices and proactive steps your company can take to increase the odds of succeeding when making this defense during informal conferences and citation contests.

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

Speakers: John Illingworth (Toronto), John F. Martin (Washington, D.C.), Kenneth B. Siepmann (Indianapolis)

3:45 – 4:45 p.m.

### **MANAGING THE MANY IMPLICATIONS OF SERIOUS INJURIES, FATALITIES, AND CATASTROPHES**

Serious injuries, fatalities, and especially catastrophes can present unique challenges for employers. Fortunately, after most workplace accidents, employers don't have to address law enforcement, the news media, prosecutors, family members, or a traumatized workforce. Attendees will leave this session aware of the potential pitfalls and prepared to handle these and other issues by developing a plan to respond swiftly and effectively should the unthinkable occur.

Moderator: Shontell Powell (Atlanta)

Speakers: John C. Artz (Pittsburgh), Elvige Cassard (New Orleans), Frank Cruise, *Senior Director – Safety & Security, Perdue Farms Inc.*

4:45 – 5:00 p.m.

### **CLOSING REMARKS**

**FRIDAY, DECEMBER 6, 2019**

8:00 – 8:45 a.m.

### **BREAKFAST**

8:45 – 9:00 a.m.

### **DAY TWO KICKOFF**

9:00 – 9:45 a.m.

### **CRIMINAL CHARGES AND UNION CAMPAIGNS: AVOIDING BOTH BY CREATING A SAFER, HAPPIER WORKPLACE (PART 1)**

Part 1 of this two-part series will offer an interactive session during which you will learn effective techniques to promote behaviors in the workplace that grow and enrich your safety culture while concurrently improving labor-management relations. Attendees will also learn how to recognize the signs of a weak safety program and how to implement meaningful and long-lasting improvements.

Speakers: Frank D. Davis (Dallas), Karen F. Tynan (Sacramento)

9:45 – 11:00 a.m.

### **CRIMINAL CHARGES AND UNION CAMPAIGNS: AVOIDING BOTH BY CREATING A SAFER, HAPPIER WORKPLACE (PART 2)**

Part 2 of this series will provide you with the opportunity to apply the concepts outlined in Part 1 to a real-life scenario.

Speakers: Frank D. Davis (Dallas), Karen F. Tynan (Sacramento)

11:00 – 11:15 a.m.

### **CLOSING REMARKS**

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 City  
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

Featuring members of the Ogletree Deakins Workplace Safety and Health Practice Group, in-house counsel, and corporate safety directors