



OSHA under Trump: A closer look

Legal experts are predicting significant changes for worker safety regulation under the new administration

[Tom Musick](#), January 29, 2017

Key points

- Labor-law experts predict that OSHA will move away from an enforcement-based strategy and toward compliance assistance and cooperative programs for employers.
- OSHA's funding could decrease, and the way it spends its funds also could change if Trump limits the agency's enforcement budget.
- Recent regulations such as the injury and illness recordkeeping rule, the silica rule and the so-called "blacklisting rule" all could be in jeopardy under the Trump administration.

A new presidential administration almost certainly will mean a new direction for OSHA, legal experts agree. Regulations could be undone. Funding could decrease. Strategies for worker safety could shift 180 degrees. How soon will changes arrive? Which objectives will take priority? Who will next be chosen to lead OSHA? Those decisions ultimately lie with President Donald Trump and his team as they settle into the White House.

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Chair's Message: Greetings all, it's that time of year for us to attempt entering the swing of things again. Many of you may have thoughts about the section and the fact that we have not had meetings lately.

As mentioned in the last newsletter, we need a new home. We have yet to have had any ideas on where to meet or any new topic suggestions for meetings. The executive committee met with our DelMarVa Chapter liaison, Brian Hughes, and Region VI Director, Frank Cruice, last week about the sustainability of the section. Based on that meeting we will probably be putting out a survey regarding the question of section livelihood. Some members of ASSE have been involved for years or even decades and know that the networking meeting model is changing as a viable forum for information sharing. There are so many ways people consume safety information now as opposed to 20 years ago,

We are all volunteers and I would hate for the section to suspend its activities indefinitely, but that may end up being the most sustainable action unless we get a fresh influx of involvement from the membership.

As always, please remain risk averse where possible and take risk where you have mitigated it.

Sincerely, Marcus Suhr, MS, CSP, CHMM
Chair- Northern Delaware Section – ASSE

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Webinars and Conferences

The "High" Risk of Marijuana

Four more states recently approved recreational marijuana. Along with changing laws comes confusion, questions and concerns by employers, HR directors and safety managers on how to handle a drug that is now legal in their state.

Jo brings years of experience from the Colorado workplace and will help you understand what these changes mean, what they do NOT mean and how to handle your policy moving forward. We will also look at trends in marijuana products affecting the workplace and best practices in drug screening.

Register Today for this FREE Webinar

DATE: March 8, 2017

TIME: 2:00PM ET - 1:00PM CT - 11:00AM PT

Speaker: Jo McGuire is the Chair-Elect for the Drug and Alcohol Testing Industry Association (DATIA) Board of Directors. She also chairs the Marijuana Education Committee, where she advocates for safe and drug-free work environments and employer's rights to drug test employees. In light of new laws pertaining to marijuana, she assists employers with understanding how to apply their workplace policies with reasonable approaches that keep safety first. McGuire was appointed to serve on the Colorado Governor's Task Force to regulate marijuana as a representative for workplace drug testing. She is also a seasoned speaker and trainer with expertise in the field of D.O.T. mandated drug testing procedures. In 2016, Jo McGuire represented workplace substance abuse concerns at the United Nations General Assembly on the world drug problem as a delegate from DATIA.

Please join: OraSure Technologies, Alere Toxicology, and Occupational Health & Safety Magazine.

Webinar Topic: The "High" Risk of Marijuana

Register Today for this FREE Webinar, DATE:

March 8, 2017, **TIME:** 2:00PM ET - 1:00PM CT - 11:00AM PT. Click on the link below to register.

<http://1105tech.com/portal/wts/ucmcmQef7Leg%7CLwtyc0BE%7Ce>

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How Managing Change Can Reduce Risk & Improve Your ROI

Please join: Medgate, ERM and Occupational Health & Safety Webinar Topic: Change is Good: How Managing Change Can Reduce Risk & Improve Your ROI

Date: Thursday, March 16, 2017

Time: 2 PM (ET) 11 AM (PT)

Register for this **free** webinar today at:

<http://1105insight.com/portal/wts/ucmcmQegrqeg7q0jqcA%5EnMe>

Overview:

As we all know, management of change as outlined in OSHA 1910.119(a)(2) only covers certain processes. However, every business, regardless of legal requirements, needs to control losses, and this is not only applicable to safety. Join Medgate and ERM in this webinar, where we will discuss the basics of change management and how to apply it to a broader scope of processes in order to better control risk, ultimately contributing to your company's bottom line.

Attend this webinar to:

- * See how to evaluate Management of Change (MOC) from a non-regulatory perspective
- * Learn how MOC can help control risk beyond safety
- * Hear some tips and tricks on avoiding common MOC mistakes
- * Understand the potential ROI

Speakers: Pam Bobbit is the Director of Channels & Product Marketing at Medgate. Having trained as a chemist, Pam has spent more than 15 years as an EHS professional in the pharmaceutical, chemical and automotive industries. At Medgate, she is using her EHS industry expertise to translate business requirements into successful software programs.

ERM: Environmental Resources Management (ERM) is a leading global provider of environmental, health, safety, risk, social consulting services and sustainability related services.

A Q&A session will be held during the last 15 minutes of the webinar. * * *

Employers can End Distracted Driving with Cell Phone Policies

Allowing employees to use cell phones while driving is allowing them to be four times more likely to crash. **Get Your Free Cell Phone Policy Kit** The dangers of cell phone use while driving are indisputable, and employers are taking action by passing policies to prevent cell phone distracted driving. The National Safety Council recommends policies that prohibit both hands-free and handheld devices and apply to all employees. Reduce the risk of cell phone crashes among your employees with our free Cell Phone Policy Kit. It has all the materials you need to build leadership support for a cell phone policy and tools to communicate to employees.

Get the free Cell Phone Policy Kit.

- **NSC Offers Distracted Driving Video Series**

Check out this series of 12 short videos to help answer the common questions about cell phone use while driving.

The Free Cell Phone Policy Kit

Employers have realized the dangers of cell phone use while driving and are taking action by passing policies to prevent cell phone distracted driving. The National Safety Council recommends policies that prohibit both hands-free and handheld devices and apply to all employees. Learn the facts by downloading the Cell Phone Policy Kit.

This kit helps employers reduce crash risk. It has all the materials you need to:

- Build leadership support in your organization for a cell phone policy
- Communicate to employees the crash risks and the need for a policy

Resources and communications available include:

- Sample policy
- Communications to build management support
- Employee communications roll out calendar
- Answers to frequently asked questions
- Myth busters info
- Activities to build employee buy-in
- Posters
- Newsletter articles
- Stories from families affected by crashes
- Cognitive distraction white paper
- Employer liability white paper
- And much more!

Upon sign-up you will receive an email from roadsafety@nsc.org with links to the kit. If you do not receive an email within 48 hours, please email us at roadsafety@nsc.org. Please also remember to add this email address to your safe sender list through your email provider to avoid updates going to your junk mail.

Used with permission, NSC,org. <http://safety.nsc.org/cellphonekit>

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Mark Kittaka, “Even if it wasn’t Trump, just having a Republican in office would have been a substantial change by itself,” said Mark Kittaka, a partner and administrator of the Labor and Employment Law Department at Barnes & Thornburg LLP in Fort Wayne, IN. “Because it’s Trump, it’s going to be even more. It definitely will change.”



On the campaign trail, Trump touted his belief in smaller government with fewer rules and more freedoms. He vowed to eliminate two regulations for every new one enacted. He promised to ease the burdens on big businesses and blue-collar workers alike by stimulating the economy and creating jobs.

Workplace safety did not take center stage as a campaign issue for Trump or any other presidential candidate. But Trump’s limited-regulation stance, coupled with his experience in construction and other industries, suggest to some that he will steer OSHA more toward compliance assistance and away from enforcement.

Trump offers the unprecedented case of an incoming commander-in-chief who has been fined multiple times by OSHA for safety violations at his worksites. His businesses also have relied on contractors and subcontractors who have been hit with major penalties. One of his contractors was fined \$104,000 after a construction worker fell 42 stories to his death in 2008 at the Trump SoHo hotel condominium in New York City. The penalty was later reduced to \$44,000.



Eric J. Conn, “Typically, OSHA is not the highest priority agency or one of the agencies that gets a lot of attention early in an administration,” said Eric J. Conn, a founding partner of Washington-based Conn Maciel Carey LLP and chair of the firm’s OSHA Workplace Safety Practice Group. “I think this could be a unique new administration that does pay some amount of attention to OSHA in the early days because he’s familiar with it.”

Once Trump turns his attention toward OSHA, what specifically could change?

Regulations in jeopardy

The injury and illness electronic recordkeeping rule could be among the first items that Trump targets, according to Conn. The rule requires many employers to electronically submit injury and illness data, which may then be published on OSHA’s website. Anti-retaliation protections also are included in the rule, which prohibits employers from discouraging workers from reporting an injury or illness.

The rule has drawn sharp criticism from some employers, who claim it is burdensome and unnecessary. In July, eight industry groups – including the National Association of Manufacturers and Associated Builders and Contractors – filed a legal challenge to block the rule, claiming the anti-retaliation provisions unlawfully banned or limited safety incentive programs and post-incident drug testing. A judge denied the motion in November.

“I could easily see, at the very least, a Trump administration curbing the publishing of that data,” Conn said. “And the other side of that same rule is the anti-retaliation elements that would prohibit some post-incident, post-injury drug testing and safety incentive programs. I could see that rule being curbed.”

A formal rulemaking process often requires years to enact change, but Trump could turn to faster, existing methods. OSHA could issue new guidance documents or letters of interpretation that reopen the door for drug

testing and safety incentive programs, for example. Or the administration could pursue a budget rider that says OSHA shall not spend any funds on implementing the electronic recordkeeping database or in collecting or reviewing employers' injury and illness data submitted pursuant to the rule – effectively invalidating its existence. Depending on the timing, some rules could be changed under the Congressional Review Act.

The silica rule published in March 2016 could be on the chopping block, Conn said, but as of press time it is set to go into effect in the construction industry in June and for general industry in 2018. The rule reduces the permissible exposure limit for respirable crystalline silica to 50 micrograms per cubic meter of air averaged during an 8-hour shift – half the previous limit for general industry and five times lower than the previous limit for construction.

Also in jeopardy is the so-called “blacklisting rule” published in August, which requires firms seeking to do business with the federal government to report previous labor-law violations. Meanwhile, ongoing but incomplete efforts such as the combustible dust rule and process safety management reform are unlikely to advance during the Trump administration.

However, not every regulation will be scrapped.



Aimee Delaney, “Worker safety regulations as a general matter are not likely to disappear – OSHA and its regulations have been around for a long time and have survived administration changes,” said Aimee Delaney, a partner specializing in labor and employment at Hinshaw & Culbertson LLP in Chicago. “Additionally, Trump’s victory was in no small part due to his appeal to the Rust Belt, blue-collar workers, so taking too aggressive an approach may conflict with the pro-employee message that helped win the election.

“However, less regulation is certainly something Trump campaigned on, and OSHA presents an area with a great deal of regulation.”

How soon could changes take place?

“During the George W. Bush administration, it was two or three years before you saw the ship really turn in a very significant way from the Clinton administration,” Conn said. “I don’t think you’re going to see overnight a dramatic change in the way OSHA operates, but by the end of four years, you will see a markedly different approach by the agency with a different set of tools than we’re seeing at the end of the Obama administration.”

Philosophical shift

Delaney expects OSHA to shift from an enforcement-based strategy toward more compliance assistance – the opposite of what was seen during Former President Barack Obama’s eight years in office.

“A policy example of this in action may see the Severe Violator Enforcement Program, which created OSHA’s ‘bad actor’ list, taking a back seat to the Voluntary Protection Program,” Delaney said.

In general, OSHA funding tends to increase under Democratic administrations and decrease under Republican administrations. Trump’s team also could change the way OSHA spends its money, for example, by reducing the agency’s enforcement budget. Kittaka said the new administration could decrease the number of higher-fine, repeat violations by shortening the time frame under scrutiny to three years from five years.

OSHA, the Environmental Protection Agency and the Department of Justice have collaborated in recent years to pursue individual indictments and prosecutions related to alleged worker safety crimes. Conn said a new attorney general – combined with newly appointed U.S. attorneys – could prompt a return to the previous approach, with far fewer worker safety criminal investigations and prosecutions.

Likewise, OSHA’s strategy of “regulation by shaming” through the use of negative press releases is also likely to be reduced or eliminated. The approach was common under the previous OSHA team, which filled its website with press releases that called out violators and demanded corrective actions.

Kittaka, who represents employers, said his clients are optimistic that the Trump administration could usher a business-friendly climate in which worker safety remained a priority.

“For the most part, I think employers are trying to do the right thing,” Kittaka said. “Nobody wants to hurt their employees. You’re going to have some bad apples out there that will get hit – and should – if they really are endangering their employees. But for the most part, employers lose money because of lost-time injuries. That’s not what they want to do. Most companies are trying to produce a product. There’s no evil intent.”

Conn agreed, saying his employer clients are “cautiously optimistic” that the business environment will improve. However, he has heard from safety professionals who are worried about how Trump might affect their mission.

“A lot of safety professionals are able to use the threat of significant enforcement to get own issues prioritized by management,” Conn said. “I suspect, and I have heard from a fair number of safety directors, safety managers, corporate safety directors, that they are concerned that safety might become less of a priority to senior management if it is less of a priority to the regulator.”

A look back

After eight years in office, Former President Barack Obama and his administrative team no longer play a role in workplace safety regulations. Workplace fatalities increased to 4,836 in 2015, which marked the highest number since Obama took office, according to the Bureau of Labor Statistics. OSHA’s budget has held steady at about \$552 million in recent years.



President Barack Obama

During his tenure, Obama often turned to Executive Orders in order to establish new rules. President Donald Trump could use the same process to undo Obama’s actions.



Secretary of Labor Thomas Perez

Perez was sworn in as labor secretary on July 23, 2013. He was a strong proponent of paid family leave and oversaw efforts to increase civil penalty amounts for labor violations.

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OSHA Administrator David Michaels

Michaels left his post in January as the longest-serving administrator in OSHA history. He pushed for rules to protect temporary workers, non-English-speaking workers and others with high rates of injury and illness.

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Call for Volunteers

Call for speakers:

We are looking for speakers for our all meetings. We are particularly interested in global views of safety and health practitioners who are willing and prepared to present to our group. Please contact Marcus Suhr at Marcus.Suhr@amtrak.com

Call for articles:

One of our goals with this publication is to continually contribute to the safety body of knowledge. Please send your transcript to me at gwpearson38@gmail.com

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