

Week of **December 9, 2013**

Criminal Charges Follow Fatal Workplace Accidents

Stiff OSHA fines are not the only thing facing employers following fatal workplace accidents. The owner of one company is going to prison while another owner faces murder charges.

The president and primary owner of a New Hampshire business was sentenced to 10-20 years in prison after being convicted on two counts of manslaughter. The case stems from an explosion in May 2010 that killed two employees at a plant of Black Mag, LLC, a gunpowder-substitute manufacturer. The owner also had to surrender his ATF explosives manufacturing license and agree never again to employ workers in any explosives-related business. OSHA issued \$1.2 million in fines after the blast.

In the other case, Philadelphia District Attorney R. Seth Williams has filed murder charges against a contractor over a June building collapse that killed six people and injured 13 others. A four-story wall the contractor was demolishing fell onto a Salvation Army Thrift Store. The contractor faces six counts of third-degree murder, six counts of manslaughter and 13 counts of recklessly endangering another person.

District Attorney Williams alleged the contractor removed key structural parts of the building from the inside first,

instead of taking the building apart from the outside, leaving the walls standing without support. "He therefore chose to maximize his profits by first deciding to remove the joists, which were valuable for his resale," Williams said.

The contractor is the second person charged in the June incident. Prosecutors also have charged an excavator hired by the contractor with six counts of involuntary manslaughter and 13 counts of reckless endangerment. OSHA has proposed \$397,000 in penalties against the two companies involved, Campbell Construction and S&R Contracting.

Criminal prosecutions are not limited to businesses in construction and general industry. Charges have been brought and convictions obtained in connection with the 2010 Upper Big Branch Mine tragedy that killed 29 West Virginia miners. The criminal investigation of that accident is ongoing.

Reminding your supervisors and managers about their personal civil and criminal liability may be a crucial way to relay the importance of workplace safety to your team. Contact the Jackson Lewis Workplace Safety and Health practice about our supervisor trainings.



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OSHA, MSHA Set Regulatory Agendas

OSHA and MSHA are moving ahead with regulatory initiatives that could substantially impact the business community.

In its regulatory agenda, released November 26, 2013, OSHA listed a number of whistleblower regulations for final action between February 2014 and October 2014. They include protections for employees working in the motor vehicle, health care, consumer financial, financial services and transportation industries. OSHA expects to release a recording-and-reporting final rule, which includes a provision revising reporting requirements when fatalities occur, in April 2014.

A final rule on confined spaces in construction is coming in February 2014; one to address slips, trip and fall hazards and requirements for personal fall protection systems, in June 2014; and a rule governing both electrical hazards for power line workers and construction hazards associated with electric power transmission and distribution lines, in November 2014.

Three proposed rules in the pipeline include one dealing with operator certification under OSHA's cranes and derricks regulation, set for release in December 2013. Another, expected in March 2014, would clarify employers' continuing obligation to make and maintain an accurate record of each recordable injury and illness. The third, dealing with beryllium, is expected in April 2014.

OSHA proposes to initiate a small business panel on combustible dust in April 2014 and to issue a proposed rule on injury and illness prevention programs in September 2014. Business interests have expressed strong opposition to both initiatives.

Likewise, there is strong opposition to two other OSHA proposals. One addresses worker exposure to crystalline silica. A proposal was released in September 2013, but the

agency has set no date for release of a final rule. The comment period ends January 27, 2014, and a public hearing has been set for March 2014. Further, no date was provided for a final rule designed to improve tracking of occupational injuries and illnesses. Businesses oppose the November 2013 proposal over concern that sensitive injury and illness information released by OSHA to the public will be used against them.

MSHA's regulatory schedule includes a final rule on miners' exposure to respirable coal dust, released in December 2013. Coal interests oppose it as being too costly and not likely to achieve its goal of curbing black lung disease. MSHA expects to release a final rule on a proximity detection proposal addressing hazards around continuous mining machines in underground coal mines in February 2014.

A second proximity detection initiative, directed at mobile machines in underground mines, carries a May 2014 release date. The anticipated release of a proposed rule to amend MSHA's criteria and procedures for assessing civil penalties is expected in December 2013. MSHA said its purpose is to revise the process for proposing penalties "to improve the efficiency of the Agency's efforts and to facilitate the resolution of enforcement issues."

A proposal governing fees for testing, evaluating and approving mining products could appear in December 2013, while a proposed rule on respirable crystalline silica is coming in June 2014, MSHA said.

The agency also announced it would issue a request for information (RFI) in March 2014 to assist MSHA in preparing regulatory actions in response to recommendations from its investigation into the 2010 Upper Big Branch Mine explosion. Finally, comments in response to an RFI on refuge alternatives that was released in August should be submitted by December 16, 2013.

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