

Week of **March 17, 2014**

Enforcement, New Rules are Themes of MSHA, OSHA Budgets

Enforcement and new regulations are twin themes of the proposed 2015 fiscal year budgets of two Department of Labor (DOL) safety and health agencies.

The Mine Safety and Health Administration (MSHA) is asking for \$377.2 million. The bulk of the money would go toward strengthening its enforcement functions, including adding six new employees. These employees are needed to shorten the time it takes to prepare special civil penalties assessments and to implement corrective actions in the wake of the 2010 Upper Big Branch-South Mine explosion, MSHA said.

The agency also wants more money to move forward on a new regulation governing hazards faced by miners working around mobile equipment in underground mines as well as on issues for rulemaking that involve rock dusting, ventilation, certified persons and mine examinations.

The agency has further proposed to end its \$8.4-million annual subsidy to the states for training. It would be replaced with a "new training model" whereby MSHA personnel will develop more training curricula, exercises and materials to assist mine operators satisfy their mandatory training obligations. Eighteen employees would be hired to help transition to the new model. MSHA proposed to end the subsidy last year, but an outcry from the states led Congress to order its reinstatement. A similar protest is expected this year.

The Occupational Safety and Health Administration (OSHA) seeks \$565 million, up nearly \$13 million from this year. About a third of the new money would go

toward hiring 27 new employees for OSHA's whistleblower protection program to address a surge in such cases. OSHA's other federal enforcement programs would see \$3 million in new funding.

OSHA's proposal also includes a request to amend its appropriations language allowing the agency to target small establishments for inspections where there is a potential for catastrophic incidents. Such businesses include those with process safety management programs or which fall under Environmental Protection Agency's risk management program. Currently, OSHA is prohibited from inspecting businesses with 10 or fewer employees in industry codes that have lower than average injury and illness rates.

The agency also identified injury and illness prevention programs, combustible dust, infectious disease, backing operations and recordkeeping as rulemaking priorities in the coming year. OSHA said it expects to release its controversial silica proposal in FY 2016. Public hearings on the rule are scheduled to begin March 18.

The National Institute for Occupational Safety and Health (NIOSH) would see a \$52 million decrease in its discretionary budget in the new fiscal year, to \$280.6 million. The decrease would come from eliminating the agriculture, forestry and fishing program under the National Occupational Research Agenda as well as NIOSH's Educational Research Centers and the National Mesothelioma Registry and Tissue Bank. Nanotechnology research would receive \$11 million if the budget is approved; the mine safety and health research office, \$52 million.

More Money Proposed for ALJ Case Backlog

The number of workers' compensation, immigration, wage and whistleblower cases has more than doubled over the past decade, while the number of judges available to handle them has declined.

To help address the backlog, which grew to 11,325 cases at the end of September 2013, the Obama Administration has proposed an additional \$2 million to hire 10 employees within the Labor Department's Office of Administrative Law Judges (OALJ).

The infusion would be welcome for an office that has seen the number of judges nationwide drop to 35 nationwide. There were 41 early in fiscal year 2013 and 53 a decade ago.

The budget request follows a February 18 letter six members of Congress sent to the White House. The

lawmakers complained of "untenable delays" in adjudicating claims, such as claims under the Black Lung Benefits Act, and alleged violations of employment law. "These delays directly and severely impact the lives of workers throughout the country, placing an undue financial and emotional burden on the affected individuals and their families," they said.

The Labor Department has stated it is committed to resolving compensation claims for workers and their families, including alleviating the ALJ case backlog.

If the funds are approved, it is likely only three or four more ALJs would be added, with the rest of the money going for support personnel.

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Ask a Jackson Lewis Attorney

Q:

We have a small business with 44 employees. Due to a sudden increase in customer orders, our president wants all employees in our production and fulfillment departments to work from 9-2 every other Saturday for the next three months. Several of our employees have claimed this violates wage and hour laws. What are the employees' and the company's rights in this situation?



***Answer provided by Teresa Burke Wright,
a shareholder in the Washington, D.C. Region office:***

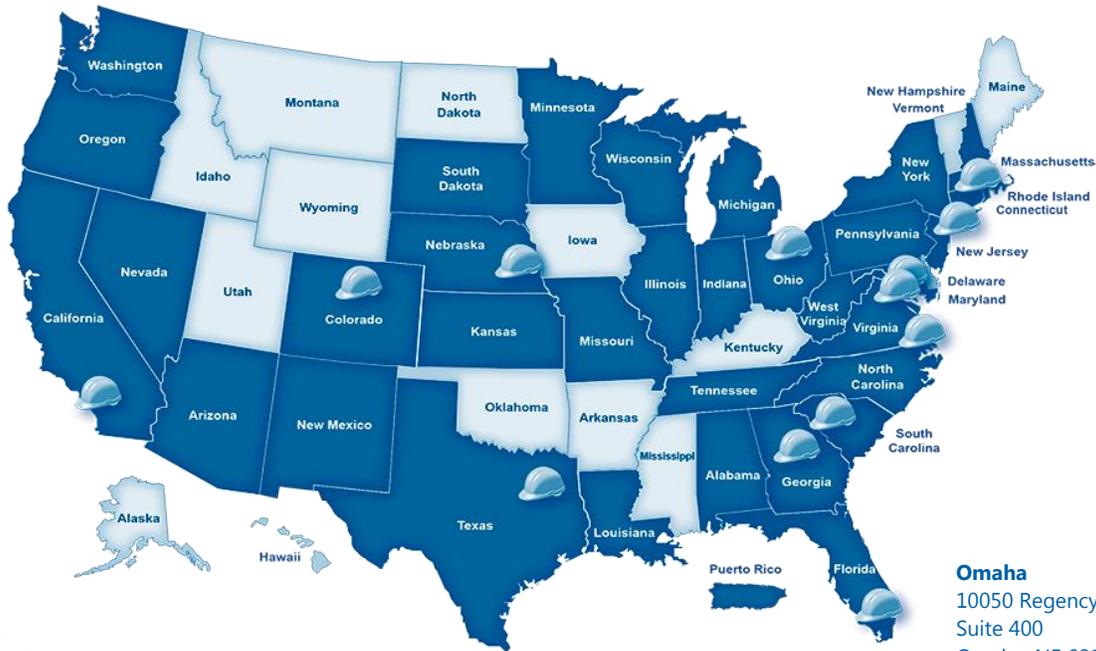
Federal wage and hour laws do not prohibit an employer from requiring employees to work on Saturdays. If the employees are "non-exempt" under the Fair Labor Standards Act, however, they must be paid one-and-a-half times their regular hourly rate for each hour worked beyond 40 in a workweek.

You also should check the state and local laws, guidance and regulations where these employees work. Some states permit employees to choose a weekend day off; others may prohibit an employer from requiring employees to work weekends, or may require a particular period of notice prior to changing an employee's work schedule. Some states may require that weekend work be paid at a higher rate. Check company policies as well, to make sure there is nothing in the company's own policies that would prohibit this change.

Do you have an employment law question that may be of interest to other employers? If so, please send it to Regan Harrison at regan.harrison@jacksonlewis.com for consideration in upcoming issues of this newsletter.



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