

Week of **January 19, 2015**

MSHA Mandates New Safety Devices in Underground Coal Mines

A new MSHA regulation requires underground coal mine operators to install proximity detection devices on continuous mining machines (CMMs). The agency has indicated it intends to require the technology on other underground mobile equipment in the future.

CMMs are giant coal-cutting machines that can strike, pin or crush miners when the units operate or are moved. Proximity detection devices can be programmed to send warning signals and shut down the machines automatically when miners get too close. The technology employs electronic sensors located on the machines, and miners wear devices the sensors are able to detect.

The agency said 35 miners have been fatally injured in mostly preventable CMM-related accidents since 1984. Further, approximately 238 others had experienced nonfatal injuries. MSHA estimated the rule would prevent nine deaths and approximately 49 injuries over the next 10 years.

"This is something whose time has arrived, both in terms of the technology and the need," said MSHA Assistant Secretary Joe Main. There are some 863 CMMs in U.S. underground coal mines today, and the agency said about half (425) already are in compliance with most of what the new rule requires. For these devices, only minor changes, such as adding warning signals, will be needed, according to the agency.

In the rule, published January 15 in the *Federal Register*, MSHA established a compliance phase-in

schedule. CMMs manufactured after this coming March 16, when the rule goes into effect, must comply with the new regulation by November 16, 2015. CMMs manufactured and equipped with a proximity detection system on or before March 16 must meet requirements no later than September 16, 2016, while CMMs manufactured without such a system on or after March 16 must be compliant no later than March 16, 2018.

"The phase-in periods are based on the availability of four MSHA-approved proximity detection systems, the estimated number of continuous mining machines that would be rebuilt or replaced by new machines during the phase-in periods, and manufacturers' capacity to produce and install these systems," the agency said in a news release.

The final rule also establishes performance and maintenance requirements for these systems and requires training for persons performing installation and maintenance.

The new requirements do not cover other underground mobile equipment, such as loaders, scoops and shuttle cars. However, the agency has proposed a second rule to cover this machinery in what many believe will apply to both underground coal and metal/non-metal mines. Although MSHA had projected release of a proposed rule for this machinery in January, its proposal has not yet gone to the Office of Management and Budget for review. OMB took a year to complete its review of the CMM rule.

There were approximately 326 active underground coal mines using CMMs in 2013. MSHA estimated the annualized compliance cost for all these operators would be \$4.7 million. To draw attention to the regulation, on January 13, Main visited

[Alliance Resource Partners' Gibson North Mine](#) in Indiana. MSHA described Alliance as a "pioneer" in installing proximity detection devices. The agency also recognized the efforts of Alpha Natural Resources, Affinity Mining Co. and CONSOL Energy.

OSHA Expects Flurry of Injury Reports

Under revisions to its reporting rule that went into effect January 1, 2015, OSHA anticipates receiving 25,000 injury reports in 2015, and says it expects to learn as it goes how to respond to them.

"This is new to us," OSHA administrator Dr. David Michaels reportedly told construction safety experts on December 4. "What we do Jan. 1 won't be the same as what we do May 1 or Jan. 1 next year. We'll learn as we go."

The new requirements mandate that when an employee receives in-patient treatment in a hospital for an occupational injury, OSHA must be notified within 24 hours of the incident leading to the hospitalization. In addition, employers also must report an amputation or loss of an eye within 24 hours.

Under the old rule, the reporting requirement was triggered by hospitalization of at least three workers. Additionally, there was no notification requirement for amputations or eye injuries. The requirement that an on-the-job fatality be reported within eight hours of a death, if the death occurred within 30 days of the incident, remains unchanged. State plans have until January 1, 2016, to begin enforcing their injury reporting requirements.

Employers may phone in their reports or file them online. The agency has three response options: send inspectors, make a call or mail a letter. "It will establish a new relationship between OSHA and many employers who previously didn't have contact with OSHA,"

Michaels said, as quoted by *Bloomberg BNA*. "Our objective is to help them."

Michaels told an advisory panel in December the new requirements would help OSHA spot problems before someone is killed. "If a worker is injured to the point of being hospitalized or loses a piece of their body, we know that is something going on at that workplace that needs some intervention," the Assistant Secretary said. "It's telling us not only are there serious hazards at the workplace, but that they've already hurt someone."

The majority of the injury and hospitalization reports would not result in an inspection due to a lack of agency staff. Instead, the intervention will be a conversation in which OSHA will seek to know how the employer plans to identify the cause of the accident and prevent a recurrence, Michaels said.

The final rule is similar to the proposal the agency issued in 2011. However, a key difference is OSHA's decision in the final rule to post the information it receives on the agency's website, a move criticized by the regulated community because the absence of that provision in the proposed rule meant the public could not comment on it.

In addition, critics contend the requirements are vague. Marc Freedman of the U.S. Chamber of Commerce wondered if an employee should report when a worker loses sight in an eye, but does not lose the eye. Others have questioned OSHA's decision to change the definition of amputation. The proposed rule defined

amputation as involving bone loss, while the final rule broadened the definition to include amputations without bone loss, such as the loss of a fingertip.

The rule also revises how OSHA classifies industries to determine which are considered low hazard. The agency is switching to the North American Industry Classification System, a move taken in response to a Government Accountability Office report and, OSHA officials said, to align the agency with most other federal agencies.

Industries that must start keeping records include automobile dealers, bakeries, liquor stores, museums and family services organizations, such as child and youth services, and services for the elderly and people with disabilities. Industries that will become partially exempt from keeping records include gasoline stations, newspaper and book publishers, wireless telecommunications carriers, and electronic appliance stores.

Jackson Lewis is hosting an upcoming webinar on

Preparing for the H-1B Cap Season

The H-1B Cap season has become increasingly stressful for employers because of the high demand for visas coupled with an outdated quota. The 2016 H1B Cap season opens on April 1, 2015 and 65,000 regular cap and 20,000 masters cap visas become available. Last year, there was a 50% chance that your petition would not be selected for adjudication. How can you best prepare for the April 1 filing date? What happens if your petition is not selected? There may be other options for keeping valued foreign national employees working. Register today for this free webinar hosted by Jackson Lewis' Immigration Practice Group.

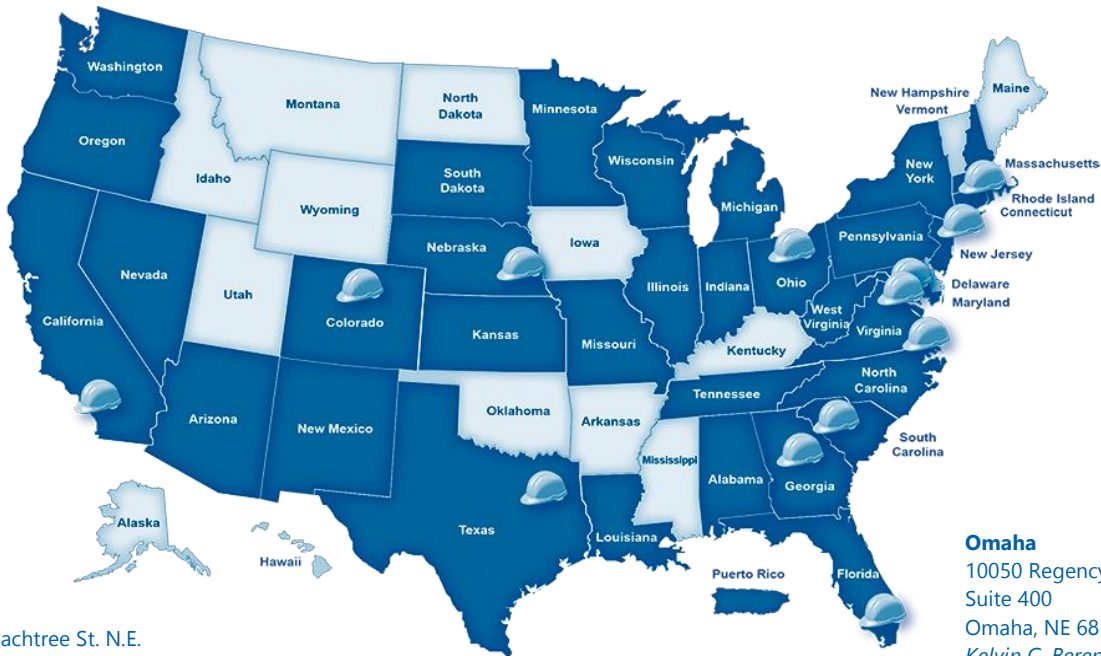
Thursday, January 29, 2015 ▪ 1:30 – 2:30PM EST

[Click here for more information and to register.](#)



Visit www.oshalawblog.com to subscribe to Jackson Lewis' OSHA Law Blog!

With experienced OSHA and MSHA attorneys located strategically throughout the nation, Jackson Lewis is uniquely positioned to serve all of an employer's workplace safety and health needs:



Atlanta

1155 Peachtree St. N.E.
Suite 1000
Atlanta, GA 30309
Carla J. Gunnin, Esq.
Dion Y. Kohler, Esq.

Boston

75 Park Plaza, 4th Floor
Boston, MA 02116
Stephen T. Paterniti, Esq.

Cleveland

6100 Oak Tree Blvd.
Suite 400
Cleveland, OH 44131
Vincent J. Tersigni, Esq.

Dallas

500 N. Akard
Suite 2500
Dallas, TX 75201
William L. Davis, Esq.

Denver

950 17th Street
Suite 2600
Denver, CO 80202
Donna Vetrano Pryor, Esq.
Mark N. Savit, Esq.

Greenville

55 Beattie Place
One Liberty Square
Suite 800
Greenville, SC 29601
Robert M. Wood, Esq.

Los Angeles

725 South Figueroa Street
Suite 2500
Los Angeles, CA 90017
David S. Allen, Esq.
Benjamin J. Kim, Esq.

Metro New York

58 South Service Road
Suite 250
Melville, NY 11747
Ian B. Bogaty, Esq.
Roger S. Kaplan, Esq.

Miami

One Biscayne Tower
2 South Biscayne Blvd.,
Suite 3500
Miami, FL 33131
Pedro P. Forment, Esq.

Norfolk

500 E. Main Street
Suite 800
Norfolk, VA 23510
Thomas M. Lucas, Esq.
Kristina H. Vaquera, Esq.

Omaha

10050 Regency Circle
Suite 400
Omaha, NE 68114
Kelvin C. Berens, Esq.
Joseph S. Dreesen, Esq.

Orlando

390 N. Orange Avenue
Suite 1285
Orlando, FL 32801
Lillian C. Moon, Esq.

Washington, D.C. Region

10701 Parkridge Blvd.
Suite 300
Reston, VA 20191
Henry Chajet, Esq.
Tressi L. Cordaro, Esq.
Garen E. Dodge, Esq.
Bradford T. Hammock, Esq.
R. Brian Hendrix, Esq.
Avidan Meyerstein, Esq.
Michael T. Taylor, Esq.
Nickole C. Winnett, Esq.

Jackson|Lewis

For more information on any of the issues discussed in this newsletter, please contact:

Brad Hammock at HammockB@jacksonlewis.com
or (703) 483-8316, Henry Chajet at
henry.chajet@jacksonlewis.com or (703) 483-8381,
Mark Savit at mark.savit@jacksonlewis.com or
(303) 876-2203, or the Jackson Lewis attorney with
whom you normally work.

The articles in this Update are designed to give general and timely information on the subjects covered. They are not intended as advice or assistance with respect to individual problems. This Update is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions. This Update may be considered attorney advertising in some states. Furthermore, prior results do not guarantee a similar outcome.

© 2015 Jackson Lewis P.C.

Mail regarding your subscription should be sent to contactus@jacksonlewis.com or Jackson Lewis P.C., 666 Third Avenue, New York, NY 10017.
Attn: Client Services. Please include the title of this publication.