

DECEMBER 20, 2019 | EVENTS

Announcing Conn Maciel Carey's 2020 OSHA Webinar Series



We are three years into the Trump Administration, and we have seen a mixed bag of change and business as usual at OSHA in enforcement and rulemaking. We watched late Obama-era OSHA rules get repealed, delayed, or amended and a modest boost in compliance assistance—the sort of policy shifts you expect to see in a transition from a Democratic to a Republican Administration. However, we have seen plenty of the unexpected, such as increases in virtually every enforcement metric, including record numbers of \$100K+ enforcement actions. And most surprising of all, OSHA still does not have an Assistant Secretary—the longest ever vacancy for the top job at OSHA—and it seems highly likely the Agency will remain without a Senate-approved leader for the entirety of this presidential term. As we move into an election year, the final year of President Trump's current term, we expect more reshuffling of OSHA enforcement policies and rulemaking priorities, and surely more surprises, so it is critical to stay abreast of OSHA developments.

Conn Maciel Carey's complimentary [2020 OSHA Webinar Series](#) includes monthly webinars presented by OSHA-specialist attorneys in the firm's [national OSHA Practice](#) designed to give employers insight into developments at OSHA during this remarkable time in OSHA's history.

To register for an individual webinar, use the registration links in the program descriptions below. To [register for the entire 2020 Series, click here](#) to send an email request, and we will register you. If you miss a program this year or missed any in prior years, click here for [our webinar archive](#).

We are exploring CLE approval for this series. If you are interested in CLE or other forms of Continuing

Education credits, [click here to complete a survey](#).

2020 OSHA Webinar Series – Program Schedule

OSHA's 2019 in Review and 2020 Forecast

Thursday, January 23rd

OSHA Settlement Tips And Strategies

Tuesday, February 25th

Strategies for Responding to Whistleblower Complaints

Wednesday, March 25th

Annual Cal/OSHA Update

Thursday, April 16th

E-Recordkeeping and Injury Reporting Update

Wednesday, May 20th

All You Need to Know About OSHA's General Duty Clause

Thursday, July 23rd

Employee Discipline – OSHA and Labor & Employment Issues

Wednesday, August 19th

Privileged Audits and Investigations and OSHA's Self-Audit Policy

Tuesday, September
22nd

Impact of the Election on OSHA

Thursday, October 22nd

Updates about OSHA's PSM Standard and EPA's RMP Rule

Tuesday, November 17th

OSHA's PPE Standards –
Top 5 Risks and Mistakes
Tuesday, June 16th

Impact of America's Aging
Workforce on OSHA and
Employment Law
Wednesday, December
16th

***See below for the full schedule with
program descriptions,
dates, times and links to register for each
webinar event.***

OSHA's 2019 in Review and 2020 Forecast

Thursday, January 23, 2020 at 1 PM ET

Presented by the Partners in Conn Maciel Carey's national [OSHA Practice Group](#)

The ball has dropped, the confetti has been swept out of Times Square, and 2019 is in the books. It's time to look back and take stock of what we learned from and about OSHA over the past year. More importantly, it is time to look ahead and assess what to expect from OSHA during this Presidential election year. In [this webinar](#), the Partners in Conn Maciel Carey's national [OSHA Practice](#) will review OSHA enforcement, rulemaking, and personnel developments from 2019, and will discuss the top OSHA issues employers should monitor and prepare for in the New Year.

Participants in [this webinar](#) will learn about:

- 2019 OSHA enforcement data and important case decisions
- OSHA organizational developments
- The future of OSHA enforcement
- Rulemaking and deregulatory developments and predictions
- Significant OSHA policy issues to watch out for in the New Year

Click [here to register](#) for this webinar.

Post-Citation OSHA Settlement Tips and Strategies

Tuesday, February 25, 2020 at 1 PM ET

Presented by [Eric J. Conn](#), [Kate McMahon](#), [Aaron Gelb](#), and a *Special Guest*

You just received a set of OSHA citations in the mail. Now what? Should we accept the citations and pay the penalty? Should we participate in an Informal Settlement Conference with the OSHA Area Office? Should we contest the citations? If we contest, does that mean we're heading to a trial? What does a good settlement look like and how can we achieve our settlement goals?

This webinar will explain the post-citation process and provide tips and strategies for resolving OSHA citations in a manner that prevents future "Repeat" violations, reduces the penalty, mitigates the impact of the citations on potential criminal prosecutions and/or personal injury or wrongful death suits, and helps you avoid the Severe Violator Enforcement Program.

During [this webinar](#), participants will learn about:

- Post-Citation options and processes
- How to assess the potential future impact of OSHA citations
- Settlement goals
- Tips and strategies to achieve settlement goals

Click [here to register](#) for this webinar.

Strategies for Responding to Whistleblower Complaints

Wednesday, March 25, 2020 at 1 PM ET

Presented by [Kara Maciel](#), [Aaron Gelb](#), and [Lindsay DiSalvo](#)

Over the past few years, employers have seen a significant uptick in retaliation claims filed by employees and investigated by federal agencies. For example, in 2010, only approx. 30% of all charges filed with the EEOC included a retaliation claim, but that number shot past 50% as of 2018. Employers have likewise seen a similar a 74% increase in the number of whistleblower claims filed with OSHA from 2012 to 2018, the vast majority of which were filed under Sec. 11(c) of the OSH Act (retaliation based on protected safety acts).

When a whistleblower complaint is received, employers have a chance to explain why the complaints lacks merit. The response is an opportunity for the employer to provide information so the agency investigating the complaint can close its file; whether that means OSHA decides an onsite inspection is unnecessary or the EEOC dismisses the discrimination charge. The responses can, however, create a written record of admissions that OSHA or the EEOC could use against the employer. Employers should thus be strategic about the information shared at that early stage and should ensure there is a procedure in place for managing and developing these responses.

Participants in [this webinar](#) will learn about:

- Applicable federal whistleblower and anti-retaliation laws
- How the EEOC and OSHA evaluate whistleblower and retaliation claims
- Strategies employers can use to effectively respond to retaliation complaints
- Proactive measures employers can take to avoid employee complaints

Click [here to register](#) for this webinar.

Key Cal/OSHA Issues California Employers Must Track

Thursday, April 16, 2020 at 4 PM EST/1 PM PST

Presented by [Andrew Sommer](#), [Eric J. Conn](#), and [Megan Shaked](#)

The state of California's Division of Occupational Safety and Health, better known as Cal/OSHA, is perhaps the most aggressive and enforcement-heavy approved state OSH Program in the nation. California employers face a host of requirements that other employers around the country do not. Likewise, the Cal/OSHA inspection and appeal process creates several unique landmines for California employers. Of particular significance in the coming year, California employers should be on the lookout for new requirements regarding indoor heat illness and workplace violence in general industry, among others.

During [this webinar](#), participants will learn about:

- Data and trends in Cal/OSHA enforcement
- Amended serious injury reporting requirements
- New rules regarding wildfire smoke and training on Valley Fever
- Other developments, such as an Indoor Heat Illness Rule, Workplace Violence in General Industry Rule, and others.

Click [here to register](#) for this webinar.

OSHA's Electronic Recordkeeping Rule and Significant Injury Reporting Rule Update

Wednesday, May 20, 2020 at 1 PM ET

Presented by [Eric J. Conn](#), [Andrew Sommer](#), [Lindsay DiSalvo](#), and [Dan Deacon](#)

OSHA's controversial E-Recordkeeping has been challenged and criticized by stakeholders since its inception, with expectations that OSHA under the Trump Administration would revise or rescind the Rule. Despite amending the rule, President Trump's OSHA did very little to narrow it, cutting only a requirement for very large employers to submit detailed injury data to OSHA. Ultimately, OSHA did nothing to alleviate concerns about the collection and publication of injury data, or the controversial anti-retaliation elements about post-incident drug testing and

safety incentive programs. Lawsuits challenging the provisions about anti-retaliation and data submission or publication, as well as OSHA's revisions to the E-Recordkeeping Rule are all on-going.

The other rule that forces employers to interact with OSHA is the Significant Injury and Fatality Reporting Rule, which was updated in January 2015. Although the enhanced Reporting Rule has now been effective for 4 years, many employers still grapple with the nuances of whether, when, and how to report hospitalizations and amputations to OSHA. We have seen OSHA frequently cite employers for late reporting and failure to report, and we have also seen plenty of citations arising out of inspections triggered by an employer reporting an injury that did not need to be reported.

Confusion about reporting requirements is also intensified by the differences among some of the State OSH Plans. For example, in California, the work-related analysis is quite distinct and the historically different reporting requirements just changed.

During [this webinar](#), participants will learn about:

- Amendments to the E-Recordkeeping Rule
- Observations about the injury data submitted to OSHA
- OSHA enforcement of the E-Recordkeeping Rule
- State Plan implementation of E-Recordkeeping requirements
- Nuances of requirements to report hospitalizations and amputations
- How OSHA responds to hospitalization and amputation reports

Click [here to register](#) for this webinar.

OSHA's Personal Protective Equipment (PPE) Standards – Top 5 Reasons to get it right and Top 5 employer mistakes

Tuesday, June 16, 2020 at 1 PM ET

Presented by [Micah Smith](#), [Aaron Gelb](#), and [Dan Deacon](#)

Personal Protective Equipment ("PPE") is an essential aspect of every safety and health program, helping to safeguard employees from a variety of workplace hazards. Given its importance, OSHA requires employers to assess their workplaces to determine whether hazards exist necessitating PPE and, if so, to select appropriate PPE, train employees how to properly use it and ensure that it is actually being worn. Failing to do this can lead to avoidable injuries, illnesses, and even fatalities. But with such vague and broadly stated requirements, many employers struggle to conduct compliant hazard assessments, understand when PPE is required, select the appropriate PPE, and even identify who is responsible for providing PPE in the first place.

This webinar will highlight the most frequent PPE mistakes that employers make, explain some of the most misunderstood provisions of the applicable OSHA standards, and discuss strategies to limit exposure to the most common PPE violations.

During [this webinar](#), participants will learn about:

- 5 reasons employers should prioritize complying with OSHA's PPE requirements
- 5 common PPE-related mistakes employers make
- Steps employers can take to mitigate PPE-related hazards and violations

Click [here to register](#) for this webinar.

All You Need to Know about OSHA's General Duty Clause

Thursday, July 23, 2020 at 1 PM ET

Presented by [Amanda R. Walker](#), [Kate McMahon](#), and [Beeta Lashkari](#)

The OSH Act's "General Duty Clause" requires employers to provide their own employees a workplace free from recognized serious hazards. The breadth of OSHA's enforcement authority under the General Duty Clause has been a moving target for decades. Is it a "catch-all" provision? Is it intended only to "fill the gaps" where OSHA has not promulgated a specific standard? Is it just a placeholder for hazards OSHA intends to address by a specific rule in the future? Or can it even provide OSHA authority to require actions beyond what is set by an existing regulation establishes a compliance standard? And where OSHA is using the General Duty Clause to cite employers, how often and in what contexts is OSHA using it, and what evidence is OSHA using to establish that a hazard is recognized by an employer or its industry?

[This webinar](#) will examine these questions, and help employers understand the scope and breadth of OSHA's authority under the General Duty Clause. We also will examine the OSH Review Commission's recent positions on the General Duty Clause, including important General Duty Clause cases involving heat illness prevention and workplace violence. Understanding the authority given to OSHA under the General Duty Clause and the reasoning applied to these situations by the Review Commission will help employers navigate tricky situations where unregulated or under-regulated hazards may be present their workplaces.

Participants in [this webinar](#) will learn about:

- The history of the General Duty Clause, how it has been interpreted
- Recent enforcement trends related to use of the General Duty Clause
- Recent OSHRC and Circuit Court cases involving the General Duty Clause
- Elements of an OSHA citation case under the General Duty Clause
- Possible defenses to General Duty Clause citations
- How best to identify, manage, and address unregulated workplace hazards

Click [here to register](#) for this webinar.

OSHA and Labor & Employment Law Issues Associated with Employee Discipline

Wednesday, August 19, 2020 at 1 PM ET

Presented by [Aaron Gelb](#), [Mark Trapp](#), and [Megan Shaked](#)

Disciplining employees, a critical tool in enforcing workplace rules, has the potential to create problems, especially when relationships deteriorate and emotions run high. Even in situations where an employer is disciplining for the right reason, if it is handled incorrectly, a lawsuit or labor grievance could turn out to be costly. But in circumstances that warrant discipline, employers cannot just sit back. Productivity, employee morale, workplace culture, employee safety and health, and meeting goals are just some of the many considerations impacted by an effective employee discipline program. Consistent employee discipline can also benefit employers in litigation, union grievances, and inspections and investigations by the EEOC and OSHA.

This webinar will give you a blueprint to lawfully discipline employee and mitigate the risk of future litigation. Participants in [this webinar](#) will learn about:

- The legal implications of disciplining employees
- Tips for drafting effective discipline policies
- Effective investigations into performance issues and misconduct
- Strategies for carrying out effective discipline in a legally sound manner
- Ways that employee discipline can be used offensively in litigation

Click [here to register](#) for this webinar.

Attorney-Client Privileged Audits and Investigations and OSHA's Self-Audit Policy

Tuesday, September 22, 2020 at 1 PM ET

Presented by [Kate McMahon](#), [Micah Smith](#), [Nick Scala](#), and [Beeta Lashkari](#)

Safety and health audits and accident or near-miss investigations are invaluable tools to identify hazards at a workplace and improve safety, but what happens when a government regulator or plaintiffs' attorney demands copies of the reports and/or recommendations from the audit or investigation? When not done carefully or under attorney-client privilege, audit and investigation reports can serve as admissions and/or a roadmap for OSHA and MSHA investigators or plaintiffs' attorneys regarding areas of non-compliance. This in turn can create a disincentive for employers to audit their facilities at all or conduct thorough investigations.

This webinar will explore the benefits of conducting audits and investigations at the direction of counsel so as to improve safety and compliance while also protecting the company and management from adverse use by 3rd party litigants or regulators. We will review audit and investigation and report-writing strategies and best practices. We will also review OSHA's policy on self-audits and the reality of OSHA's use of voluntary self-audits

during inspections. And we will review best practices to manage MSHA's unlimited lookback period for enforcement.

Participants in [this webinar](#) will learn about:

- Implementing attorney-client privileged audit programs and investigations
- Maintaining privilege over results of audits and investigations, while still effectively implementing findings
- How OSHA, MSHA or 3rd party litigants can use self-audits and inspections against an employer
- OSHA and MSHA statute of limitations and policies on lookback for audit and incident and/or near miss reports

Click [here to register](#) for this webinar.

Election Special – What to Expect from OSHA After the Upcoming Presidential Election Under Either Outcome

Thursday, October 22, 2020 at 1 PM ET

Presented by [Kate McMahon](#), [Amanda Walker](#), and [Micah Smith](#)

Next month, we will once again have the opportunity to cast a ballot to elect the President of the United States. The election will result in either a second term for President Trump or a new Democratic Administration. As always, we expect the platforms and proposed policies of the candidates to be quite divergent, so we will offer some projections about how the government's actions on workplace safety would differ under each candidate. In particular, we will discuss how the OSHA enforcement and rulemaking landscape is likely to change in a second Trump term and what to expect in those areas from a President from the Democratic Party. This webinar will discuss the public positions taken by both candidates about safety and health enforcement and rulemaking, and the likely impacts depending on which candidate takes control of the Executive Branch in 2021, as well as which party takes control of the House and Senate.

Click [here to register](#) for this webinar.

Process Safety Update: The Latest with OSHA PSM & EPA RMP

Tuesday, November 17, 2020 at 1 PM ET

Presented by [Eric J. Conn](#), [Amanda Strainis-Walker](#), [Micah Smith](#), and [Beeta Lashkari](#)

Following the tragic West Fertilizer explosion in 2013, then-President Obama issued an Executive Order directing OSHA, EPA and other agencies to "modernize" the way the government regulates chemical process safety. OSHA and EPA took sweeping actions in response to the EO, from enforcement initiatives (like the new wave of refinery and chemical facility PSM National Emphasis Program inspections) to rulemaking and interpretation

letters to overhaul OSHA's PSM and EPA's RMP regulatory programs. Then President Trump took office with a deregulatory agenda, leaving the regulated community to wonder what this meant for the process safety regulatory landscape.

Rather than a unwavering drive toward deregulation, however, the Trump Administration initiatives in this area have been splintered, with some deregulatory initiatives proceeding, others coming to a complete halt, and still others being pared back in a deregulatory-lite fashion. For instance, we saw immediate delays and the beginning of rollbacks of new process safety regulations, yet enforcement initiatives appeared to move forward unhindered. And now, with three years of the Trump Administration in the books and an important Presidential Election looming, it remains unclear where the regulatory landscape will ultimately settle.

This webinar will review the status and likely future of OSHA's PSM Standard and EPA's RMP Rule, as well as other major process safety developments from the federal government, state governments, and industry groups.

Click [here to register](#) for this webinar.

Delaying Retirement: Impact of America's Aging Workforce on OSHA and Employment Matters

Wednesday, December 16, 2020 at 1 PM ET

Presented by [Jordan Schwartz](#), [Amanda Strainis-Walker](#), and [Beeta Lashkari](#)

The single biggest factor affecting safety and health in America's workplaces today is our aging workforce. Older workers offer valuable experience and job knowledge, but with that comes an increased risk of serious workplace injuries due to physiological changes affecting flexibility, strength, vision, hearing, and balance. Although older workers experience fewer total injuries than their junior counterparts, the injuries they do have tend to be more severe and require longer recovery times. With more than 30 million workers 55 years or older expected to be in the U.S. labor force by 2025, and huge numbers of workers remaining in the workforce well past traditional retirement age, employers face unique challenges in keeping employees safe and healthy and complying with a host of state and federal laws.

This webinar will review realities about our nation's aging workforce and how employers must carefully address the realities without violating OSHA regulations and federal and state anti-discrimination laws, such as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Americans With Disabilities Act.

Participants in [the webinar](#) will learn about:

- Data and trends driving America's aging workforce
- Impact the aging workforce has on workplace safety and health
- Related OSHA regulatory issues employers must monitor
- Title VII, and other age and disability discrimination pitfalls.

Click [here to register](#) for this webinar.

