JANUARY 27, 2023 | EVENTS

Announcing Conn Maciel Carey LLP's 2023 MSHA Webinar Series!

Entering MSHA's third year under the Biden Administration, the mining industry should expect to see a more active and emboldened agency. The past year saw the completion of MSHA political leadership, and a renewed focus on rulemaking and enforcement. In the year to come, operators can expect to see at least two rules from the agency, specifically regarding MSHA's long-awaited proposed rule on respirable crystalline silica – or respirable quartz as MSHA sometimes refers – and the final form or the Surface Mobile Equipment rule. In conjunction with the anticipated silica rule, MSHA continues to engage in increasingly aggressive enforcement regarding industrial hygiene at the nation's mines. The coming year will be active from both an enforcement and rulemaking perspective, meaning it is as important as ever for operators to stay attuned to developments at MSHA.

Conn Maciel Carey's complimentary 2023 MSHA Webinar Series includes free programs put on by the MSHA-focused attorneys in the firm's national MSHA Practice Group and is designed to give employers insight into the changes and developments at MSHA during this active period for the agency.

To register for an individual webinar in the series, click on the link in the program description below, or to register for the entire 2023 series, click here to send us an email request so we can get you registered. If you missed any of our past programs from the MSHA Webinar Series, here is a link to a library of webinar recordings. If your organization or association would benefit from an exclusive program presented by our team on any of the subjects in this year's webinar series or any other important MSHA-related topic, please do not hesitate to contact us.

MSHA's 2022 in Review and 2023 Forecast

Tuesday, February 21st

Mid-Year Update and FMSHRC Significant Cases

Wednesday, July 19th

The Mine Act and MSHA Inspection Powers
Thursday, March 23rd

Preparing for Serious Accident and Fatality Investigations
Tuesday, April 18th

Where Does MSHA's Authority Begin and OSHA's End?
Tuesday, May 16th

Managing MSHA Complaint & 105(c) Investigations
Tuesday, September 12th

Safety-Related Incident Investigations and Audit Reports
Thursday, October 5th

Best Practices at Multi-Operator MSHA Sites
Wednesday November 15th

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

MSHA's 2022 in Review and 2023 Forecast

Tuesday, February 21, 2023 at 1 PM EST / 10 AM PST

Presented by Nick Scala

With 2022 behind us, now is the time to take stock of the state of MSHA as the Biden Administration enters its third year. MSHA's senior political leadership is now in place, and with that, we expect to see MSHA's true

agenda for rulemaking and enforcement take shape and be put into action.

This webinar will review the past year's enforcement trends and initiatives, as well as the regulatory agenda, highlighting the evolution of MSHA, and its priorities for the coming year.

Participants in this webinar will learn:

- 2022 MSHA enforcement data, predictions for future areas of emphasis
- Enforcement trends, initiatives, and areas of emphasis
- MSHA's rulemaking agenda for the year

Click here to register for this webinar.

MSHA Basics: The Mine Act and MSHA Inspection Powers

Thursday, March 23, 2023 at 1 PM EST / 10 AM PST

Presented by Nick Scala

The Federal Mine Safety & Health Act of 1977 ("The Mine Act") created the agency that we know today as MSHA and codified its authority and powers that govern America's mining industry to date. Unlike the OSH Act, the Mine Act mandated MSHA conduct inspections each year – two per year at active surface operations and four per year at an underground mine. However, required inspections are not the limit of MSHA's authority to conduct investigations, and are not the limit of the investigations it is required to complete.

This webinar will review the Mine Act and MSHA's authority to conduct inspections at the country's mine sites.

The webinar will also review MSHA's powers beyond regular safety and health inspection, and provide best practices for preparing your operation for MSHA's inevitable visit.

Participants in this webinar will learn:

- The Mine Act and the creation of MSHA and the FMSHRC
- Review MSHA's inspection authority and inspections MSHA is required to complete
- Best practices for preparing your site and team for MSHA's inspections

Click here to register for this webinar.

Preparing for MSHA Serious Incident and Fatality Investigations

Tuesday, April 18, 2023 at 1 PM EST / 10 AM PST

Presented by Nick Scala

While mine operators and mining contractors are likely used to MSHA conducting on-site safety and health inspections, when a serious incident occurs, the MSHA investigation takes a different approach. Seasoned mine operations are often caught off-guard by the depth of the investigation after a serious incident and are at times taken aback by the tone of the investigation – usually conducted by unfamiliar MSHA personnel from other areas in the district and management and non-management employee interviews will be central to the investigation. MSHA is also likely to issue a 103(K) Order, essentially shutting down the area or equipment subject to the incident, and the Order can stay in place for months, leaving the operator in a loss position.

This webinar will review MSHA's approach to a serious incident or fatal incident investigations. Participants will learn strategies to manage MSHA's investigation for the company while conducting the operator's investigation into the incident. The webinar will also cover miner and mine management rights throughout MSHA's investigation.

Participants in this webinar will learn:

- The process of reporting an accident to MSHA
- The strategy employed by MSHA accident investigators
- Miner and Mine Management rights concerning interviews
- Overview and best practices for working through MSHA shutdown orders and enforcement

Click here to register for this webinar.

MSHA Jurisdiction: Where Does MSHA's Authority Begin and OSHA's End?

Tuesday, May 16, 2023 at 1 PM EST / 10 AM PST

Presented by Nick Scala

The Department of Labor's Occupational Safety and Health Administration (OSHA) and Mine Safety and Health Administration (MSHA) split the authority to regulate the nation's workplaces, but the line of jurisdiction between the two is not always as clear as you would think. The line in the sand is largely drawn out in a 1979 Memorandum of Understanding (MOU) between the agencies, but that document leaves many questions outstanding. While some of these have been answered by the court system – including OSHRC and FMSHRC –

many times questions or jurisdiction live in a very grey space.

This webinar will cover the basic jurisdiction lines between MSHA and OSHA, and dive into some areas where the answer is not so clear, including contractors working temporarily at mine sites and facilities straddling the line between mining and manufacturing.

Participants in this webinar will learn:

- Basic delineations of MSHA and OSHA according to agencies' MOU
- Clarification regarding jurisdiction over borrow pits and temporary mining operations
- Understanding of when short-term contractors must comply with MSHA
- Review of legal guidance on manufacturing versus mining, specifically in relation to industrial mineral processing

Click here to register for this webinar.

Mid-Year MSHA Update and FMSHRC Significant Decision Review

Wednesday, July 19, 2023 at 1 PM EST / 10 AM PST

Presented by Nick Scala

Halfway through 2023, it is time to once again take stock of what we have learned about MSHA's priorities and trends to date. We will further examine which decisions from the Federal Mine Safety & Health Review Commission will be most impactful for operators and the agency.

This webinar will look at what has transpired at MSHA 2023, including enforcement, new initiatives, and/or rulemaking. Additionally, it will review significant case decisions that have come down from the Federal Mine Safety and Health Review Commission (FMSHRC) and its Administrative Law Judges (ALJs) that will impact the mining industry.

Participants in this webinar will learn:

- MSHA enforcement trends and initiatives through mid-2023
- FMSHRC decisions impacting mine operators and independent contractors
- Strategies to prepare operations for changing enforcement tactics and standard interpretations

Click here to register for this webinar.

Managing MSHA Complaint Investigations and 105(c) Complaints

Tuesday, September 12, 2023 at 1 PM EST / 10 AM PST

Presented by Nick Scala

MSHA's authority does not end at regular safety and health inspections, or with serious incident investigations. It is unquestioned that miners have the right to file complaints with MSHA, but what some operators may not know is that MSHA is required to conduct an investigation into miner complaints promptly. This includes safety and health complaints, and it also includes complaints of discrimination under §105(c) of the Mine Act. Whistleblower/discrimination protections have been emphasized by the Biden Administration and its Department of Labor, and that includes MSHA. Additionally, MSHA offers miners the opportunity to be temporarily reinstated during the investigation or pendency of the legal matter in some instances. Operators unfamiliar with this process may unknowingly waste vital moments, which have the potential to be very damaging in this process.

This webinar will review MSHA's obligations to investigate complaints of safety and health concerns, as well as complaints of discrimination by miners. Participants will learn the timelines for the investigations and best practices for defending against such complaints.

Participants in this webinar will learn:

- How MSHA responds to and investigates safety and health complaints
- The scope of 105(c) investigations and the investigation process
- How temporary reinstatement is invoked and the process for implementation
- Best practices and strategies for defending against complaint investigations

Click here to register for this webinar.

Tips and Strategies for Safety-Related Incident Investigation and Audit Reports

Thursday, October 5, 2023 at 1 PM EST / 10 AM PST

Presented by Nick Scala, Dan Deacon, and Victoria Voight

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:

- Implementing attorney-client privileged audit programs and investigations
- Key steps to conduct a thorough investigation
- 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.

Best Practices and Challenges of Multi-Operator MSHA Sites

Wednesday, November 15, 2023 at 1 PM EST / 10 AM PST

Presented by Nick Scala

Working with independent contractors at your mine site is a common occurrence, but not always an easy one. Contractors are essential to the mining industry and will continue to be a constant at the nation's mines in perpetuity, but as constant as contractors are so are the questions surrounding their presence. Many operators rely on contractors to tell them if a contractor's employees will qualify as miners for training purposes and assume the contractor is well-versed in MSHA regulations and training expectations. While many contractors satisfy these requirements without issue, operators need to be prepared to make the appropriate inquiries and evaluations when bringing a contractor on-site.

This webinar will cover strategies for both mine operators and independent contractors to streamline the onboarding and selection process, and also help facilitate a productive relationship while contractors are on-site.

Participants in this webinar will learn:

- The threshold for when contractors are required to provide comprehensive miner training to its employees and which company is responsible for this
- Best practices for mine operators and contractors to work together and delineate responsibility at the mine
- Mine operator and contractor liabilities during MSHA inspections and investigations

Click here to register for this webinar.