DECEMBER 16, 2022 | EVENTS

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

ANNOUNCING CONN MACIEL CAREY LLP'S 2023 OSHA WEBINAR SERIES

Two years into the Biden Administration, with senior political leadership now firmly entrenched at federal OSHA, the agency is making good on its promise to "use all of the tools available" in its regulatory and enforcement toolbox to protect workers. In part, that has taken the form of increasingly aggressive enforcement (more inspections, more significant penalties, etc.), hiring more compliance officers, launching new special emphasis enforcement programs, and expanding its enforcement policies like its Severe Violator Enforcement Program. It has also taken the form of a broad-based rulemaking agenda that includes work on a new heat illness rule, pushing out a permanent COVID-19 standard for healthcare, expanding its E-Recordkeeping requirements, among other high priority rulemakings.

Accordingly, it is more important now than ever before for employers to stay attuned to developments at OSHA. To help you do so, Conn Maciel Carey LLP is pleased to present our complimentary 2023 OSHA Webinar Series, which includes monthly programs (sometimes more often, if events warrant) put on by the OSHA-specialist attorneys in the firm's national OSHA Practice Group. The webinar series is designed to arm employers with the insight into developments at OSHA that they need during this period of unpredictability and significant change.

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 programs over the past eight years of our annual OSHA 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 OSHA-related topic, please do not hesitate to contact us.

2022 Year in Review and 2023 Forecast
Thursday, January 26th

Annual Cal/OSHA Update
Thursday, February 16th

Responding to Whistleblower Complaints
Tuesday, March 21st

Repeat, Willful, Egregious and SVEP
Thursday, April 13th

OSHA Rulemaking Update
Thursday, May 18th

Preparing for OSHA Inspections
Thursday, June 8th

Mid–Year Review of OSHA Developments
Thursday, July 20th

OSH State Plan Update
Thursday, August 10th

Powered Industrial Trucks
Thursday, September 14th

Investigations and Audit Reports
Thursday, October 5th

OSHA's PSM Standard & EPA's RMP Rule
Tuesday, November 14th

Combustible Dust
Thursday, December 7th

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

OSHA'S 2022 IN REVIEW AND 2023 FORECAST

Thursday, January 26, 2023 at 1 PM EST / 10 AM PST

Presented by the Partners in Conn Maciel Carey's national OSHA Practice Group

As we approach the midway point of the Biden Administration, it's time to look back and take stock of what we learned from and about OSHA during another very eventful year. More importantly, it is once again time to look ahead and discuss what employers should expect from OSHA during Year 3 of the Biden/Harris administration. In this webinar, the Partners in Conn Maciel Carey's national OSHA Practice Group will review OSHA enforcement data and trends as well as changes to the SVEP program and new emphasis programs, rulemaking, and personnel developments from 2022. We will also discuss the top OSHA issues employers should monitor and prepare for in the New Year.

Participants in this webinar will learn about:

- 2022 OSHA enforcement data and important case decisions
- The future of OSHA enforcement during the Biden Administration
- Rulemaking initiatives and predictions
- Significant OSHA policy issues to watch out for in the New Year

Click here to register for this webinar.

ANNUAL CAL/OSHA ENFORCEMENT & REGULATORY UPDATE
Thursday, February 16, 2023 at 1 PM EST / 10 AM PST

Presented by Andrew Sommer, Fred Walter, Megan Shaked, and Samuel Rose

Cal/OSHA and the California legislature have continued to focus their efforts on extending workplace mandates associated with COVID-19, heat illness and wildfire smoke. This update will cover the transition from Cal/OSHA's COVID-19 Emergency Temporary Standard to the Non-Emergency COVID-19 Rule as well as other workplace safety mandates that have been recently adopted or are under consideration.

During this webinar, participants will learn about:

- Cal/OSHA's COVID-19 Non-Emergency Standard and the status of rulemaking over a general infectious disease standard
- Updates to the COVID-19 exposure notice and outbreak reporting requirements – Assembly Bill (AB) 2693
- Extended sunset date for law creating a disputable presumption, under specified circumstances, that a COVID-19 related illness is compensable for workers' compensation purposes – AB 1751
- Mandate for Cal/OSHA to develop rulemaking proposal for revising the heat illness and wildfire smoke standards– AB 2243
- Law establishing "Fast Food Council" to promulgate minimum employment standards for fast food restaurants, including standards on wages and working conditions – AB 257
- Workplace posting requirements to include specific languages other than English – AB 2068

- Other regulatory developments from the Cal/OSHA Standards Board, such as the status of the proposed indoor heat illness rule and the workplace violence prevention rule for general industry
- Insight into DOSH enforcement trends and strategies for managing the regulatory landscape

Click here to register for this webinar.

RESPONDING TO WHISTLEBLOWER COMPLAINTS
Tuesday, March 21, 2023 at 1 PM EST / 10 AM PST

Presented by Jordan Schwartz, Lindsay DiSalvo, and Victoria Voight

Over the past several 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 up to almost 60% in FY 2021. Similarly, the vast majority of whistleblower complaints filed with OSHA in FY 2021 – about 75% – were filed under Sec. 11(c) of the OSH Act (retaliation based on protected safety acts).

When a general retaliation or whistleblower complaint is received, employers have a chance to explain why the complaint should be dismissed. 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.

REPEAT, WILLFUL, EGREGIOUS & SEVERE VIOLATOR ENFORCEMENT PROGRAM ENFORCEMENT UPDATE
Thursday, April 13, 2023 at 1 PM EST / 10 AM PST

Presented by Eric Conn, Aaron Gelb, and Darius Rohani-Shukla

OSHA violations characterized as Repeat or Willful will soon carry penalties exceeding $150,000 each. You may

be wondering, however, what exactly leads OSHA to characterize a violation as Repeat or Willful, and why are they important beyond their high-dollar cost? No doubt, you heard that OSHA changed the Severe Violator Enforcement Program (SVEP) in September 2022, making it easier to place employers into the program and saddle them with all the negative consequences associated with it even though the citations which prompted the referral are not yet final orders. And the word around the Beltway is that OSHA will soon be revising its "Egregious" enforcement policy which it has been using to generate multi-million-dollar enforcement actions.

This webinar explains the legal standard for Repeat, Willful and Egregious violations, the potential consequences for receiving them, and how OSHA's enforcement policies have resulted in a significant increase in the frequency with which we see these aggravated characterizations.

Participants in this webinar learned the following:

- The legal standards OSHA must meet to establish Repeat and Willful violations
- Background and details about OSHA's Egregious / Per-Instance Enforcement Policy
- Policy changes that have resulted in more Repeat and Egregious violations
- Impacts of these aggravated characterizations, including qualifying into the Severe Violator Enforcement Program, facing criminal charges, etc.
- What employers should do to avoid Repeat and Willful citations

Click here to register for this webinar.

OSHA RULEMAKING UPDATE
Thursday, May 18, 2023 at 1 PM EST / 10 AM PST

Presented by Kate McMahon, Lindsay DiSalvo, and Beeta Lashkari

As we move into the second half of President Biden's first term, OSHA is turning up the heat on the rulemaking gears. The next two years may see the most active rulemaking period in the agency's history – lead, heat, infectious disease, LOTO, PSM, E-Recordkeeping, HAZCOM, COVID-19 for Healthcare, etc. … and the list goes on. Join us for a lively discussion of OSHA's rulemaking agenda, a refresher on the OSHA rulemaking process generally, and our take on the agency's true rulemaking priorities and significant changes of which you should be aware. We also will discuss state agency rulemaking activities of note and how those differ or align with the equivalent federal regulatory programs.

Click here to register for this webinar.

PREPARING FOR AND MANAGING OSHA INSPECTIONS

Thursday, June 8, 2023 at 1 PM EST / 10 AM PST

Presented by Aaron Gelb, Dan Deacon, and Ashley Mitchell

Over the past year, the number of OSHA inspections has soared, especially since the COVID-19 pandemic eased and restrictions were lifted. We are seeing more inspections, higher penalties, record numbers of $100K+ citation packages, and a continuing rise in willful and repeat citations and worker safety criminal prosecutions. OSHA has also continued its aggressive inspection strategies, including targeted enforcement initiatives and emphasis programs, that create a minefield for employers. In short, the consequences for employers being caught ill-prepared for an OSHA inspection, and making bad choices during an inspection, are more dire now than ever. This webinar will provide employers with the knowledge and tools they need to prepare in advance for an OSHA inspection, and once an OSHA inspection begins, to manage it to a successful outcome.

Participants in this webinar will learn:

- Employers' Goals for managing an OSHA inspection
- Steps employers can take now to prepare in advance for an OSHA inspection
- Employers', employees', and OSHA's rights during OSHA inspections
- Stages of OSHA inspections, with tips and strategies to manage each stage

Click here to register for this webinar.

MID-YEAR REVIEW OF OSHA DEVELOPMENTS
Thursday, July 20, 2023 at 1 PM EST / 10 AM PST

Presented by Tony Casaletta, Victoria Voight, and OSHA Associates

Having shared a series of predictions during our January webinar regarding how OSHA continue focusing on enforcement and rulemaking in Year 3 of the Biden Administration, we will take stock of what has happened at DOL and OSHA during the first 6 months of 2023, discuss surprise developments, and look ahead at the remainder of 2023 and beyond. We will take a close look at enforcement trends, including new emphasis programs, and check in on various rulemakings likely to matter to the regulated community. At the same time, we will evaluate how President Biden is faring on his promises to increase OSHA's budget, grow the number of inspectors and generally be the best president for labor in history. We will also review key changes regarding compliance assistance, Voluntary Protection Programs, and other trends.

Participants in this webinar will learn about:

- OSHA's Regulatory Agenda, including rulemaking and policy setting priorities around Heat Illness, COVID-19, and other hazards
- Changes in Congressional oversight as the Republicans take control of the House
- Key organizational changes at OSHA
- New or renewed enforcement initiatives and emphasis programs

- Predictions for what employers can expect from OSHA for the remainder of 2023

Click here to register for this webinar.

OSH STATE PLAN UPDATE
Thursday, August 10, 2023 at 1 PM EST / 10 AM PST

Presented by Eric Conn, Dan Deacon, and Darius Rohani-Shukla

22 states have OSHA-approved state plans that cover both private and state and local government workers. State plans have their own penalty reduction policies and procedures that may differ from OSHA but must at least as effective. Whiles the regulations are often like OSHA, they are not identical – employers in state-plan states cannot assume that complying with federal OSHA regulations will suffice. Keeping up with the changes in policies and procedures in state plan states can also be challenging for employers. We will take a close look at state plans in MI, NC, OR, WA, IN, IA, TN, and KY.

Participants will learn about:

- The differences between state and federal OSHA
- Key updates in state-plan regulations
- Changes in policies and procedures in those state-plan states
- Compliance tips for employers that have employees working in multiple states

Click here to register for this webinar.

WAREHOUSE OPERATIONS & POWERED INDUSTRIAL TRUCKS
Thursday, September 14, 2023 at 1 PM EST / 10 AM PST

Presented by Aaron Gelb, Dan Deacon, and Ashley Mitchell

Warehouses, typically cleaner and quieter than a manufacturing facility, can nevertheless pose a series of hazards, many of which are not readily apparent to the naked eye. The warehousing and storage industry includes facilities focused on general merchandise, refrigerated goods, and other products, as well as establishments providing logistical services relating to goods distribution. Potential hazards include those associated with powered industrial trucks (forklifts), ergonomics, material handling, hazardous chemicals, and slip/trip/falls. Included among the most common types of injuries in the warehouse setting are musculoskeletal disorders and being struck by powered industrial trucks and other materials handling equipment.

Powered Industrial Trucks (PITs) are ubiquitous across general industry as they are used for a variety of purposes in warehousing and logistics facilities, as well as in all manner of production establishments. OSHA's PIT standard (1910.178) imposes a host of requirements, a number of which are often misunderstood by

employers and some that are misapplied even by OSHA. Given the serious hazards associated with operating PITs, OSHA has launched Local Emphasis Programs in a number of regions that enable Area Offices to open programmed inspections or expand unprogrammed inspections into an employer's PIT programs.

Participants in this webinar will learn about:

- OSHA enforcement priorities related to warehousing operations and PIT Local Emphasis Programs
- Key requirements for material handling and storage, walking working surfaces, hazardous chemicals, and PIT programs, including selection, training, maintenance, and safe operations
- How to identify deficiencies in your PIT program
- Tips to audit your workplace for compliance with 1910.176 and 1910.178

Click here to register for this webinar.

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 about:

- 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.

PROCESS SAFETY UPDATE: THE LATEST WITH OSHA PSM AND EPA RMP
Tuesday, November 14, 2023 at 1 PM EST / 10 AM PST

Presented by Eric Conn, Micah Smith, and Beeta Lashkari

President Biden's OSHA and EPA are working to transform the process safety regulatory landscape. EPA has [presumably] now pushed out its RMP Amendments creating significant misalignment with OSHA's PSM Standard. OSHA has continued to work on its reforms of the PSM Standard, but still has a ways to go. The CSB has now moved from its quorum of one at the start of the Biden Administration to a crowded Board room, and has [presumably] staffed up its investigation teams. This webinar will review these and other process safety related regulatory and enforcement updates at OSHA (and the State OSH Plans), EPA, and CSB.

Click here to register for this webinar.

COMBUSTIBLE DUST
Thursday, December 7, 2023 at 1 PM EST / 10 AM PST

Presented by Kate McMahon, Beeta Lashkari, and Tony Casaletta

Although the understanding of the hazards of combustible dust has developed over the last decades, it remains an elusive and complex subject to both regulators and employers. Combustible dust hazards can be present in a broad spectrum of industries, including the food (e.g., candy, sugar, spice, starch, flour, feed), grain, tobacco, plastics, wood, paper, pulp, rubber, pesticide, pharmaceutical, dyes, coal, and metals (e.g., aluminum, chromium, iron, magnesium, and zinc) industries. Although OSHA does not have a specific standard for general industry regulating combustible dust (OSHA's standard is limited to grain handling facilities), it does have a National Emphasis Program (NEP) on the hazard, which it uses regularly to inspect certain facilities and issue citations under the General Duty Clause. Additionally, as one of its Drivers of Critical Chemical Safety Change, combustible dust hazards are one of the U.S. Chemical Safety Board's (CSB's) top advocacy priorities, prompting the CSB to initiate investigations and, if it deems them appropriate, issue recommendations to employers (among others) and publicize reports detailing the cause of combustible dust incidents.

To mitigate the risk of potentially catastrophic incidents and avoid citations from OSHA and/or recommendations from the CSB, employers with dusts that may be combustible are well-advised to proactively address any associated hazards they may have in their facilities.

In this webinar, participants will learn about:

- Background on the hazard
- CSB findings and investigations
- OSHA's Combustible Dust NEP

- Applicable NFPA standards
- Employer best practice tips

Click here to register for this webinar.