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Two Recent Judicial Decisions Transform the OSHA Regulatory Landscape for Railcar Fall Protection

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While grain and feed employers have a relatively clear idea of what OSHA expects them to do when entering bins, maintaining equipment, and preventing the accumulation of fugitive dust because those requirements are set forth in the agency's grain handling standard, 1910.272, OSHA has been all over the map—literally—of late, taking different positions as to what employers can and cannot do when loading railcars. The grain handling standard does not address railcar loading, and while OSHA has provided guidance to its enforcement personnel, the interpretation and application of that guidance have been anything but consistent. Two recent judicial decisions—one issued by a federal court of appeals and the other by an administrative law judge with the Occupational Safety and Health Review Commission ("OSHRC")—have, however, significantly clarified what OSHA can require when loading railcars, and perhaps more importantly, when OSHA has jurisdiction over such work.

First, OSHA no longer has jurisdiction over work performed on or involving railcars—even loading conducted on private property—in the states that comprise the Eighth Circuit—Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. In a recent opinion, the Eighth Circuit Court of Appeals held in *MFA v. OSHRC*, that the Federal Railroad Administration, not OSHA, has exclusive jurisdiction over such work, vacating citations issued to a Missouri-based grain-handling company. While OSHA may still appeal this decision, the course of action for employers in these states appears clear—do not consent to attempts by OSHA to inspect or evaluate your railcar loading process. Safety, of course, remains of paramount importance, and grain industry employers can and should continue the development, adoption, and implementation of railcar loading safety programs that include training, the use of fall protection where feasible, and the use of administrative controls for work done down the line from any fall protection systems.

Meanwhile, employers in Fed OSHA states outside the Eighth Circuit may now wish to consider withholding consent if and when OSHA attempts to inspect their railcar loading operations. While the Eighth Circuit's opinion is not controlling in other circuits, it provides employers with a legitimate basis for declining to consent to expanding an inspection into railcar loading operations in such circumstances. Whether OSHA Area Offices in states outside the Eighth Circuit will continue inspecting railcar loading operations remains to be seen, as it is possible that OSHA will accept this ruling and allow it to apply nationwide.

Assuming OSHA continues to maintain that it has jurisdiction to inspect and cite hazards associated with railcar loading at a grain handling facility, covered employers in every Fed OSHA state outside the Eighth Circuit now have greater clarity as to the limits of OSHA's ability to cite employers within the parameters set forth in the Miles Memo following the issuance in July 2025 of an **Administrative Law Judge's opinion in *Finley Farmers Grain & Elevator*, OSHRC No. 24-0889.**

OSHA issued the Miles Memo, officially titled entitled *Enforcement of Fall Protection on Moving Stock*, in October 1996, to clarify how the fall protection and personal protective equipment regulations should be applied to and enforced when individuals are working on "rolling stock," where use of a fall protection system or personal protective equipment for fall protection may not be feasible. As such, the Miles Memo explained that falls from rolling stock would not be cited under Subpart D, which governs walking working surfaces and fall protection. When Subpart D subsequently underwent a rulemaking process that resulted in a new final rule issued in November 2016, OSHA decided not to change its requirements or enforcement policies related to rolling stock fall protection, stating in the Preamble to the Final Rule that then-existing enforcement policies on rolling stock would remain in place.

The Miles Memo also significantly limits when OSHA can cite an employer related to work on top of rolling stock under 29 C.F.R. § 1910.132, which addresses the use of personal protective equipment. Specifically, the Miles Memo states that "it would not be appropriate" to use § 1910.132 to cite an employer "*unless* employees are working atop stock that is positioned inside of or contiguous to a building or other structure…"

Despite this clear language in the Miles Memo, in *Finley*, OSHA issued a citation, characterized as willful, alleging that the employer erred in allowing employees to work on top of railcars without the use of fall protection when those railcars were positioned by the Railroad down track from an existing fall protection system. After the employer contested and filed a motion for partial summary judgment, asking the ALJ to vacate this citation, the ALJ issued a strongly worded opinion rejecting the citation and clarifying the limits of OSHA's ability to cite employers for hazards associated with loading railcars.

First, OSHA may not cite employers under the General Duty Clause for issues involving personal protective equipment.

Second, in the context of fall hazards on the tops of rolling stock (like railcars) that are located away from a structure, OSHA can only issue General Duty Clause citations to employers relating to the use of *administrative* measures when loading railcars (e.g., not getting on top of cars during inclement weather); this does not include violations involving the use (or non-use) of fall arrest PPE.

Third, the Miles Memo restricts the Secretary from citing an employer under 1910.132(a) for failure to ensure the use of fall protection equipment where employees are working on top of railcars located away from any building or structure. The Miles Memo memorializes the Agency's conclusive determination that the use of fall protection equipment is feasible only when railcars or other rolling stock are positioned inside of or contiguous to a building or structure and, thus, *the Secretary can only require the use of fall protection equipment for work on top of railcars when the railcars are positioned under or adjacent to a building or other structure*.

Finally, the Miles Memo establishes that employers have no legal duty under 1910.132 or the General Duty Clause

to “relocate” railcars or other rolling stock to a new location inside of or contiguous to a structure before work is permitted so that fall protection equipment can be used on top of the rolling stock. By its very nature, rolling stock can always be relocated and, as such, OSHA cannot mandate its relocation.

With harvest in full swing in parts of the country and just getting underway in others, many employers may not even be aware of the seismic shifts that took place this summer with respect to OSHA’s ability to regulate and cite hazards associated with railcar loading. In one large swath of the Midwest, OSHA no longer has such authority. Full stop. In other parts of the US, OSHA still has the ability to inspect and cite such operations, but has been reminded that said power has its limits and those limits are set forth in the Miles Memo. And yet, even with these checks on regulatory reach, conscientious grain handling employers will still assess the hazards associated with railcar loading at their facilities and take steps to mitigate or eliminate them.