

OCCUPATIONAL SAFETY & HEALTH ACT (OSHA)

Since the Occupational Safety and Health Act (OSHA) was enacted in 1970, OSHA regulations and employer-compliance obligations have expanded considerably. At the same time, OSHA inspections have become increasingly targeted through the agency's programmed enforcement activities, including Site-Specific Targeting (SST), National Emphasis Programs (NEPs), Regional Emphasis Programs (REPs), Local Emphasis Programs (LEPs), and Enhanced Enforcement Programs (EEPs).

As the regulatory environment has become increasingly complex, compliance efforts often require collaboration between skilled personnel within the company and outside counsel and consultants with appropriate technical knowledge.

Who Is Affected?

Nearly every company in every industry is subject to OSHA regulations and therefore faces potential OSHA inspections. At Hodgson Russ, we have helped clients in a number of industries to manage their OSHA exposures. To name just a few, we have assisted cabinetmakers, chemical manufacturers, coating and dipping facilities, common carriers, construction contractors, dairies, hospitals, industrial equipment manufacturers, machine shops, metal fabricators, nonprofit health and human service providers, nursing homes, sawmills, schools, supermarkets, trenchers, and warehousing operators.

How We Can Help

Our attorneys regularly assist clients at every stage of OSHA inspections, including providing proactive pre-inspection planning and counseling on employers' legal rights related to the inspection process. When OSHA inspections are due to specific accidents or injuries, we lead clients through appropriate investigations to help manage the workers' compensation and civil liability exposures that can result. We also counsel clients on the interplay of OSHA's enforcement activities and civil liability. Regular successes on behalf of clients include the withdrawal or narrowing of OSHA inspection requests and the avoidance or reduction of citations and penalties, including through negotiation and administrative litigation.

Selected Services Include:

- Analysis by employer classification of likely exposures through identification of commonly cited regulations

Contact

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Professionals

Attorneys

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- Communication with OSHA officials on an employer's behalf
- Compliance counseling about applicable regulations and the "general duty" clause
- Counseling for construction contractors regarding liability exposures and other implications of OSHA's multi-employer citation policy
- Counseling with regard to workers compensation and civil liability exposures associated with workplace accidents and OSHA inspections
- Defense of citations, penalties, and abatement
- Defense of whistleblower and discrimination complaints
- Development and implementation of protocols and procedures to be followed in the event of an inspection
- Drafting and negotiation of settlement agreements
- Employer-rights counseling regarding the commencement, procedure, and conduct of an OSHA inspection
- Participation in OSHA inspections
- Plant and worksite tours to facilitate hazard identification and safety planning
- Record keeping and reporting of occupational injuries and illness
- Representation of employers in contest proceedings before the Occupational Safety & Health Review Commission
- Risk and inspection-exposure counseling related to programmed enforcement activities, including SSTs, NEPs, REPs, LEPs, and EEPs
- Risk and inspection-exposure counseling related to unprogrammed inspections commenced as a result of employee complaints, referrals, or accidents
- Strategic decision-making and preparation for managing an inspection

Experience

Representation of non-profit organization in OSHA violation and administrative litigation stemming from a death caused by a workplace violence incident.

Successfully obtained summary judgment in favor of housing authority on common law indemnification claim against contractor as relates to personal injury claim of subcontractor injured on premises during construction project.

Represented school district in alleged "sick building" case commenced by a group of students and teachers against contractors and manufacturers where plaintiffs sought to recover damages for illnesses allegedly caused by exposures to hazardous substances upon return to school following a renovation project. Successfully argued novel interpretation of CPLR 205(a) on appeal to the Appellate Division, which reversed the lower court's denial of motions to dismiss the complaint for repeated failure of plaintiff to comply with court-ordered discovery. Defended plaintiff's appeal of Appellate Division's Order to the Court of Appeals, which affirmed this dismissal based on the CPLR 205(a) argument.

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Successfully moved to dismiss action commenced by Workers Compensation Board against a former trustee alleging breaches of Trust Agreement and fraud associated with the management and administration of a defunct self-insured workers compensation trust formed pursuant to Workers Compensation Law § 50-a.

In the News

Coronavirus Resource Center

Thought Leaders - COVID-19 and Work Safety
Buffalo Business First, October 30, 2020

Information for Healthcare & Telehealth Providers
April 23, 2020

Publications

OSHA Alters the Balance on Employee Representation During Walkaround Inspections- Opening the Door to Union Organizing and Leaving Many Practical Questions Unanswered
Hodgson Russ Occupational Safety & Health Act Alert, May 3, 2024

OSHA Launches National Emphasis Program Targeting Warehousing and Distribution Operations
Hodgson Russ Occupational Safety & Health Act Alert, August 8, 2023

OSHA Targets Healthcare Industry and Reopens Comment Period for COVID-19 Regulatory Standard
Hodgson Russ OSHA and Healthcare Alert, March 28, 2022

OSHA Withdraws COVID-19 Emergency Temporary Standard to Focus on Permanent Standard; Sixth Circuit Appeal Dismissed as Moot
Hodgson Russ OSHA and Labor & Employment Alert, February 18, 2022

U.S. Supreme Court Enjoins OSHA's Covid-19 Vaccine-Or-Test Regulation, But Allows CMS Vaccine Mandate to Proceed
Hodgson Russ OSHA and Labor & Employment Alert, January 14, 2022

OSHA & CMS Vaccination Rules Move Forward As Supreme Court Mulls Arguments On Injunctive Relief
Hodgson Russ OSHA and Labor & Employment Alert, January 12, 2022

U.S. Supreme Court Agrees to Hear Arguments on Applications to Stay the OSHA and CMS COVID-19 Vaccine Mandates
Hodgson Russ OSHA and Labor & Employment Alert, December 23, 2021

Sixth Circuit Dissolves Injunction and Stay of Enforcement of OSHA's Emergency Temporary Standard on COVID-19 Vaccination and Testing
Hodgson Russ OSHA and Labor & Employment Alert, December 20, 2021

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President Biden and Federal Government Preliminarily Enjoined From Enforcing Federal Contractor Vaccine Mandate Throughout the United States

Hodgson Russ OSHA and Labor & Employment Alert, December 8, 2021

Sixth Circuit Wins “Lottery” while OSHA Stands Down on Implementation and Enforcement of its Vaccine Mandate

Hodgson Russ OSHA Alert, November 17, 2021

Presentations & Events

Return to the Law Office: Vaccines, OSHA and the NY HERO Act

August 24, 2021

COVID-19 Safety Considerations & Implications

July 1, 2020

Reopening Your Business: New York Forward and Preparing Your Business’ Safety Plan

June 10, 2020

Reopening Your Business: New York Forward and Preparing Your Business’ Safety Plan

June 9, 2020

Reopening Your Business: New York Forward and Preparing Your Business’ Safety Plan

May 29, 2020

What Employers Need to Know about Reopening the Workplace

May 15, 2020