

Legal Update Article

OSHA Nomination Signals Greater Enforcement, New Standards

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Signaling significant regulatory and enforcement changes from the Occupational Safety and Health Administration (OSHA), President Joseph Biden has named a California official to lead the agency.

Biden nominated Douglas Parker, the chief of California's Department of Industrial Relations Division of Occupational Safety and Health (Cal/OSHA) on April 9, 2021, to serve as the Assistant Secretary of Labor for Workplace Safety and Health to lead OSHA. Parker had represented labor representatives and private and public sector unions as an attorney, and he was appointed by President Barack Obama to serve as Senior Policy Advisor and Deputy Assistant Secretary for the Mine Safety and Health Administration (MSHA). Parker left MSHA in 2019 to serve as Executive Director for Cal/OSHA, which advocates health and safety measures for workers.

While it is too early to predict Parker's likely priorities, Biden will expect Parker to quickly promulgate and enforce a federal COVID-19 [Emergency Temporary Standard](#) (ETS), as Parker did at Cal/OSHA. The Cal/OSHA ETS has come under industry criticism and litigation over concerns related to feasibility of imposed preventive measures, paid leave requirements in connection with mandatory exclusions, COVID-19 case management procedures, COVID-19 testing, and failure to follow the Administrative Procedures Act.

Parker would step into an agency that has prioritized greater enforcement efforts, including:

- Issuing a [National Emphasis Program](#) that focuses enforcement resources on industries at greatest hazard for spread of COVID-19;
- Releasing an [Updated Interim Enforcement Plan for COVID-19](#), which includes reviews of employers' safety programs and documents prior to on-site inspections, with particular emphasis on healthcare employers; and
- Doubling the number of compliance officers in the field, as Biden proposed before taking office. Biden proposed a budget that includes funding increases for the U.S. Department of Labor, which may be used to refill OSHA compliance officer positions left vacant under President Donald Trump.

Parker also may bring other Cal/OSHA initiatives to OSHA, such as Injury and Illness Prevention Plans, and he may revive an Infectious Disease Standard proposed under Obama.

Before leading Cal/OSHA, Parker advocated for tougher standards for workplace exposure to airborne chemical contaminants, and he has been a critic of post-accident drug testing programs that might tend to discourage injury reporting. He also has been a vocal critic of monetary employee incentives for low injury and illness rates.

If the Senate confirms his nomination, Parker would become the first to fill the post since David Michaels left it in January 2017. Trump nominated Scott Mugno for the position in October 17, 2017, but Mugno withdrew from consideration in May 2019 after the Senate failed to act on his nomination.

If you have questions or need assistance, please reach out to your Jackson Lewis attorney or a member of the [Workplace Safety and Health Practice Group](#).

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