

OSHA Focusing Enforcement Efforts on ‘Vulnerable Workers’ at Construction Sites

By Michael R. Hatcher &

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Meet the Authors



Michael R. Hatcher

Principal

(703) 483-8328

Michael.Hatcher@jacksonlewis.com

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Top leaders of the Occupational Safety and Health Administration (OSHA) have detailed new and upcoming enforcement efforts to protect “vulnerable workers” (*i.e.*, immigrant, minority, female, and lower-paid) who may be more vulnerable to workplace hazards.

In his opening remarks to the American Bar Association’s Workplace and Occupational Safety and Health Law Committee, Assistant Secretary of Labor Doug Parker, a former California-OSHA Labor Commissioner who now leads OSHA, said a recent summit with worker advocates led him to conclude the agency must connect workplace hazards with social factors underlying injuries and illnesses for specific demographic communities. Comparing data from 2021 to 2021, Parker noted that Latino workers experienced the highest rate of workplace fatalities and African American worker fatalities reached an all-time high while being “steered into the dirtiest, most hazardous jobs.” He also noted personal protective equipment (PPE) often is designed to fit male workers, excluding female workers from safe work. He additionally observed that the undocumented immigrant workers often refuse to report workplace hazards to OSHA for fear of deportation.

The agency has taken specific steps to address social factors that Parker identified as root causes of injuries and illnesses and the underreporting of serious incidents. For example, on February 13, 2023, former Labor Secretary Marty Walsh signed a memorandum granting OSHA compliance officers authority to issue “U Visas” and “T Visas” to provide immigration status for undocumented workers participating in workplace investigations of “qualifying criminal activities,” including trafficking, manslaughter, felony assault, obstruction of justice, forced labor, and extortion. OSHA sometimes issue “criminal willful” citations, and, in private conversation, Parker elaborated on efforts to collaborate with state and federal law enforcement agencies to prosecute corporate officials who knowingly and willfully expose workers to hazards that result in fatalities.

Parker and construction attorneys in a separate seminar spoke about OSHA’s National Emphasis Programs focusing on fall protection and heat illness. Since September 8, 2022, the agency has conducted more than 1,600 inspections for heat illness, yielding more than 1,200 citations on a variety of safety issues. The agency has increasingly applied egregious penalties for fatal fall protection hazards, enabling it to cite separately for each instance of violation, thus multiplying monetary penalties.

Parker signaled an imminent Notice of Proposed Rulemaking intended to enhance equity in protection and work opportunities for female construction workers by requiring correctly fitting PPE. Finally, Parker noted that construction workers experience a fivefold occurrence of suicide by drug overdoses compared to other workplaces. Therefore, he urged training managers to identify signs of mental health issues and intervene to provide assistance.

Considering Parker's remarks, and the planned Notice of Proposed Rulemaking, employers should assess their diversity, equity, and inclusion (DEI) initiatives and ensure those initiatives include a focus on how workplace safety issues can impact a diverse workforce in different ways depending on the employee's gender, race, and other protected characteristics. An effective DEI program takes these differences into account and should mitigate a company's vulnerability to equity-based enforcement actions.

To learn more, or if you need compliance assistance related to the defense of an OSHA inspection or citations, please contact a member of the [Workplace Safety and Health Practice Group](#) or the attorney with whom you regularly work.

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