

# Construction Industry Workplace Law Update – Summer 2023

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### OFCCP's Focus on Construction Contractors Increasing

The federal government's focus on the construction industry is growing as more construction companies benefit from the Infrastructure Investment and Jobs Act (IIJA). The IIJA was signed into law by President Joe Biden on Nov. 15, 2021, and is funneling millions of dollars into infrastructure improvement projects. Now, the government is increasing focus on the companies receiving the benefit of those federal dollars, and the Office of Federal Contract Compliance Programs is increasing the number of construction contractors it audits. [Read full article ...](#)

### Lessons for Construction Industry in Labor Board's New Test to Classify Independent Contractors

The National Labor Relations Board has made finding independent contractor status harder under the National Labor Relations Act. *The Atlanta Opera, Inc.*, 372 NLRB No. 95 (2023). This decision may significantly affect business in the construction industry, where employers frequently confront the dilemma of how to classify their work relationships. [Read full article ...](#)

### Building and Construction Industry Exemption: Tool to Contest Withdrawal Liability

The Multiemployer Pension Plan Amendments Act of 1974 was enacted purposefully by Congress to seize moneys from contributing employers to fund multiemployer defined benefit pension funds regardless of the employers' culpability for the underfunding of those plans. However, the construction industry is one of a few industries in which the impact of withdrawal liability upon employers has been eliminated. [Read full article ...](#)

### EEOC to Focus on Diversity in the Construction Industry

In its report, "Building for the Future: Advancing Equal Opportunity in the Construction Industry," the U.S. Equal Employment Opportunity Commission identifies the challenges to diversity and inclusion in the industry and promises to take steps, including releasing industry-specific technical assistance for employers, unions, and workers, to enhance diversity and inclusion. [Read full article ...](#)

### Labor Judge Decision Explains Employer Discipline of Employee for Serious Performance Issues

Two important principles under the National Labor Relations Act are worth reiterating to construction employers: first, employees cannot be disciplined for engaging in activity protected by that Act; and, second, employers may still discipline employees in the wake of protected activity as long as the discipline occurs for unrelated misconduct. The decision of a National Labor Relations Board administrative law judge in the matter of *Redi Carpet, Inc.*, No. 16-CA-292266 (June 1, 2023), clearly illustrates

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these principles. [Read full article ...](#)

### Contested Safety Citation Struck Down as OSHA Fails to Make Its Case

Inspectors from the Occupational Safety and Health Administration must be able prove that the employer should have been aware of hidden dangers to issue citations, the Occupational Safety and Health Review Commission has determined. *Secretary of Labor v. Raymond – San Diego, Inc.*, OSHRC No. 21-0505 (Mar. 6, 2023). This case illustrates how proactively complying with OSHA regulations and taking a critical look at the legal merits of any citation may reveal a viable defense. [Read full article ...](#)

### Impact of Critical Withdrawal Liability Interest Rate Assumption on Construction Industry Employers

Withdrawal liability is a major concern for many employers with collectively bargained operations. While special rules applicable to the construction industry can limit the circumstances under which liability can be imposed, they do not eliminate it entirely. Recent case law on the interest rate assumption used to calculate such liability (once imposed) can dramatically affect the extent of an employer's liability. [Read full article ...](#)

Please contact a Jackson Lewis attorney if you have any questions about any of these developments.

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