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## OSHA gets tough on repeat offenders

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Companies with a history of violating federal safety standards face tougher scrutiny after the U.S. Occupational Safety and Health Administration promised to crack down on repeat offenders.

While the move comes as the number of companies with multiple safety violations continues to rise, a recent court ruling expanded OSHA's ability to target corporate offenders.

Employers with a history safety problems are effectively on notice from OSHA to improve their safety protocols, experts say.

OSHA signaled its tougher stance in December when it reported that 2019 showed "a significant increase in the number of inspections" and promised to continue enforcement.

"As part of their general overall emphasis on safety ... we are seeing more violations" among companies not complying with the same standards or multiple standards, which includes repeat citations, said Neil Brunetz, of counsel in the Atlanta-based office of Drew Eckl & Farnham LLP, which represents employers.

"Sometimes that can expand to different facilities and different locations; we are going to see more and more as they continue to up enforcement, as they did last year and will continue in the future," said Mr. Brunetz.

In December 2019, OSHA announced a \$27,000 fine against San Leandro, California-based Bigge Crane and Rigging Co., the company found liable for a crane that collapsed in a storm in Dallas in June 2019. The company had a history of federal and state citations going back to 1999, with one stemming from a fatal collapse of a crane in Arkansas in 2013. The company, which did not return calls for comment, was also cited in 2014, alleging in part that it failed to follow manufacturer procedures for constructing a crane, as is alleged in the 2019 citation.

"In cases like this crane disaster, (problems are) only identified after workers have been killed, and that's tragic," said David Michaels, an epidemiologist and professor at George Washington University and former assistant secretary of Labor for OSHA.

"Part of the problem is that OSHA fines remain very low, and more importantly, the likelihood of actually catching a violator is very low... OSHA has enough inspectors to inspect every workplace around once every 165 years, and that doesn't count workplaces that are not stationary," like temporary construction sites, he added.

Kim Worl, a Folsom, California-based principal industrial hygienist with Network Environmental Systems Inc., a consulting and training firm, said he expects OSHA to continue to crack down.

"(OSHA) is trying to identify companies that have historically not been serious about OSHA violations," he said, listing a number of top violations that line up with OSHA's own list of most-frequent violations: failing to use fall protection, lack of safety training, and failing to control hazardous chemicals and the related respiratory protections.



Companies with noted “repeat” violations are on the rise, according to Eric Conn, founding partner of Conn Maciel Carey LLP in Washington.

A repeat violation is when OSHA has previously cited the employer for a “substantially similar condition,” and the Occupational Safety and Health Review Commission has affirmed the previous citation, according to OSHA.

In 2004, 2.4% of OSHA violations were repeat and — steadily rising since — 5.5% were considered repeats in 2017, according to OSHA data compiled by Conn Maciel Carey.

A review of OSHA announcements during peak construction months of May and June 2019 show that of the 25 companies cited or fined for violations of safety standards, eight were described as repeat violations. And changes underway could put more companies in the repeat category, according to Mr. Conn.

A major decision from the 2nd U.S. Circuit Court of Appeals in New York in 2018 eliminated time restrictions in determining when a violation can be considered repeat. Prior to the Obama administration, OSHA could look back three years, but it later was changed to five years.

The federal appeals court ruled OSHA was not restricted by time, according to documents in *Triumph Construction Corp. v. Secretary of Labor*. “OSHA has an unlimited resource for repeats,” said Mr. Conn.

Other changes include OSHA’s elimination of a requirement that companies can only be cited for violations at the same location, he said.

“They used to look at individual workplaces as unique,” said Mr. Conn. “OSHA blew down that barrier.”

The issue of predecessor companies has also widened the net with OSHA now considering an acquired company’s history of safety violations as part of the sale, meaning companies can be cited for repeat violations from incidents they were not connected to at the time.

“All of this together, which was done with deliberate intention to cite repeat violations, has resulted in more than double the amount of repeat violations,” said Mr. Conn. “On the other side, there are really bad companies out there ... but some just get swept up because they are a large employer.”

Management needs to pay attention and put resources and support toward safety to avoid becoming “good and close personal friends with OSHA,” said Greg Gerganoff, owner of Denver-based Rocky Mountain Consulting Inc., which provides safety consulting services primarily for the oil and mining industries.

A safe work culture starts at the top and is most effective when leadership listens to its workers on the ground, Mr. Gerganoff said.

Mr. Poague agrees, noting that although it’s never fun to ask employees whether what the company is doing to promote safety is right, “that continuous feedback loop” is what’s effective.

There’s compelling evidence that well-managed companies place an importance on safety and are more productive and profitable, said Mr. Michaels. When companies don’t remedy hazards, they’re “endangering their most valuable resource — their workers.”

*Angela Childers contributed to this report*