

CLIENT ALERT

DOJ and DOL Announce Plan to Prosecute More Workplace Safety Violations

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Employers of all stripes, shapes, and sizes should take heed: the Department of Justice announced in a [press release](#) on December 17 that it is actively working with the Department of Labor to "increase the frequency and effectiveness of criminal prosecutions of worker safety violations." Citing "troubling statistics on workplace deaths and injuries," the DOJ issued a [Memorandum](#) to all United States Attorneys announcing the Department's "renewed commitment" to pursuing criminal prosecution and penalties as an additional enforcement tool for violations of three federal statutes focused on workplace safety and health: the Occupational Safety and Health Act of 1970 (OSH Act), the Federal Mine Safety and Health Act of 1977 (Mine Act), and the Migrant and Seasonal Agricultural Worker Protection Act.

Part and parcel to this effort, the DOJ announced that it and the Department of Labor entered into a [memorandum of understanding](#) (MOU) to establish procedures to better coordinate criminal referrals and ultimately the prosecution of workplace safety laws. Also addressed in the MOU are information and data sharing between the two departments regarding investigations and training. Under the MOU, identified points of contact within the DOL "shall discuss periodically with the DOJ those employers or worker safety matters that may be appropriate for enhanced investigation or criminal referral," and the DOL agrees to "robust information sharing" with the DOJ, including opening its investigative files (subject to protections for confidential information) to the DOJ for investigation and litigation.

Workplace safety is becoming a greater focus of the DOL and DOJ, in part because enhanced safety legislation, proposed several times during the current administration, has failed to get through Congress. The DOJ's press release specifically notes that its prosecutors are increasingly "encouraged" to use the general federal criminal code (Title 18) "to enhance penalties and increase deterrence" given the fact that the workplace safety statutes typically only provide for misdemeanor penalties. The DOJ's Environmental Crimes Section of its Environment and Natural Resource Division will be responsible for overseeing future criminal investigations and prosecutions of workplace safety violations, in conjunction with the U.S. Attorneys around the country.

Neither the MOU nor the Memorandum to the U.S. Attorneys sets forth any new obligations or penalties, and they do not commit any additional funds. This new initiative should serve as a reminder to employers, however, that criminal penalties can and do accompany violations of workplace safety laws, and that the DOJ also enforces other laws in conjunction with these violations and violations of other employment laws – such as perjury, witness tampering, conspiracy, and obstruction. Indeed, it may not be a coincidence that this announcement comes on the heels of the recent high-profile prosecution and conviction of the former Massey Energy CEO for *misdemeanor* conspiracy, stemming from the 2010 West Virginia coal mine explosion that killed 29 miners.

Employers should review their OSHA, MSHA, and other safety and health compliance and training policies and programs, as applicable, and all internal investigation procedures to minimize the risk of violations, and should consult with counsel when concerns are identified.

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