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OSHA 30/30®
A thirty minute update on OSHA law every thirty days
with Manesh Rath

FAILURE TO DOCUMENT PROCEDURES FOR VERIFYING DE-ENERGIZATION UNDER LOCKOUT TAGOUT STANDARD

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An audio recording and slide deck will be provided post-webinar on www.khlaw.com/osha3030
Lawrence P. Halprin is a partner in Keller and Heckman’s workplace safety and health, chemical regulation and litigation practice groups. He is nationally recognized for his work in workplace safety and chemical regulation. His workplace safety and health practice covers all aspects of legal advocacy, including: representing clients in OSHA and MSHA investigations and enforcement actions; providing compliance counseling and training; conducting incident investigations, compliance audits and program reviews; participation in federal (OSHA, MSHA and NIOSH) and state rulemakings and stakeholders processes; bringing and intervening in pre-enforcement challenges to final agency rules; advising on legislative reform and oversight; and participation in the development of national consensus standards under the ANSI process, and TLVs under the ACGIH process.

Mr. Halprin’s engineering and financial background and extensive knowledge of OSHA rulemakings have greatly enhanced his ability to provide compliance counseling and represent clients in enforcement actions, and evaluate and critique rulemaking proposals and suggest alternative approaches. On behalf of one or more clients, Mr. Halprin has participated in almost every major OSHA rulemaking over the past 25 years as well as numerous Cal-OSHA rulemakings.
Manesh K. Rath

Manesh Rath is a partner in Keller and Heckman’s litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court including Staub v. Proctor Hospital and Vance v. Ball State University.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. On developing legal issues, he has been quoted or interviewed in The Wall Street Journal, Bloomberg, Smart Money magazine, Entrepreneur magazine, on "PBS's Nightly Business Report," WAVY-TV and C-SPAN. He was listed in Smart CEO Magazine's Readers' Choice List of Legal Elite. Mr. Rath was voted by his peers to the Best Lawyers In America list in 2015 and 2016.

Mr. Rath has extensive experience representing industry in OSHA rulemakings. He has successfully represented employers—including some of the largest in the country—in OSHA citations and investigations before federal OSHA in regions across the country and in state plan states.

Mr. Rath currently serves on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

TOPICS TO BE DISCUSSED

- Review of OSHA’s Lockout/Tagout Standard (LOTO) regarding documentation of procedures
- Recent Review Commission decision
  - Finding failure to establish and document isolation verification procedures
  - Taking expansive view of chemical energy
- Practical tips on compliance and how to handle inspections in light of this enforcement trend
Facts:

• Removing a vacuum tower bottoms pump from a crude oil unit before a contractor could perform maintenance
• A discharge gate valve had not been fully closed due to an internal obstruction – thus a leak
• The leak ignited, causing $320M damage
• No fatalities or injuries.
• OSHA conducted inspection
• Cited for failure to document process for verifying effective isolation of energy while performing LOTO.
CITGO’S LOTO PROGRAM

- Complex chemical process unit vs. single piece of electrical equipment

- Typical approach for chemical process facility is a comprehensive generic procedure supplemented by a permit to work detailing task-specific LOTO instructions based on:
  - scope of work
  - the part of refinery involved
  - source of energy
  - type of energy

- Heavy reliance on training to ensure permit is properly prepared and implemented
CITGO’S LOTO PROCESS

- Identify scope of work
- Prepare an energy isolation list
  - Location of each isolation point
  - Size of equipment
  - Lockset designations
  - Lockbox numbers
- Close all valves
- Install blinds
- Walk the process line to visually verify
CITGO conducted an incident investigation

Found a valve that an employee apparently thought was shut because he couldn’t crank any further was actually partially open due to an obstruction caused by a foreign object.

5 flights of valve stem still visible.

CITGO concluded that an employee failed to verify that the system had zero energy.
Procedures shall be developed, documented and utilized for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

The procedures shall clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy, and the means to enforce compliance including, but not limited to, the following:

Specific procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy;

Specific procedural steps for the placement, removal and transfer of lockout devices or tagout devices and the responsibility for them; and

Specific requirements for testing a machine or equipment to determine and verify the effectiveness of lockout devices, tagout devices, and other energy control measures.
1. Verification Procedures for Performance Standard
   - Were written verification instructions required?
   - If so, can a Safe Work Permit be used for that purpose?
   - If so, can training be used as a substitute?
   - Adequacy of visual inspection?

2. Exceptions To LOTO Documentation Requirement

3. Does LOTO apply?
   - What is the hazardous energy source?
   - Chemical Energy? Thermal Energy?
**WHAT EMPLOYERS SHOULD DO**

1. Review approach to control of chemical energy
2. Review adequacy of LOTO verification procedure
3. Document appropriate verification procedure
4. With a major event, counsel should be involved early on, potentially with the internal investigation
Next OSHA 30/30
Please join us at 1:00 PM Eastern U.S.
Wednesday, September 21st, 2016
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