



Keller and Heckman LLP's Employment and OSHA Practice

places great emphasis on preventive legal strategies. On the employment issues, we seek to minimize the likelihood of employee disputes, including claims of employment discrimination, wrongful discharge and sexual harassment. On the OSHA side, we provide advanced guidance on how to minimize the likelihood of accidents and conditions that would trigger OSHA enforcement actions. We draft or review clients' existing personnel policies, employee handbooks, safety and health programs and policies that meet or go beyond federal and state laws. The firm also provides guidance on effective methods of preparing for and handling inspections by a variety of state and local government agencies, including OSHA, EPA, FDA and others. Disputes and enforcement actions cannot always be avoided, and our employment and OSHA law attorneys are prepared to and have litigated such matters nationwide.

For additional information on Keller and Heckman LLP's Employment and OSHA Practice, visit our website at www.khlaw.com.

OPT-OUT: Keller and Heckman LLP provides the Workplace Alert as an informational tool to businesses. If you prefer not to receive the Workplace Alert, please email us at optout@khlaw.com. If you would like to opt out of all Keller and Heckman electronic advisories, please type "Remove All." Please allow 5 business days for your request to be processed.

OPT-IN: If this was sent to you by a third party and you would like to be included on our mailing list, please email Traci Mott at Mott@khlaw.com and provide your name and email address, along with your request.

Workplace Alert is distributed free of charge and published by the law offices of Keller and Heckman LLP. Copyright © 2005. All rights reserved. Articles are on topics of general interest and do not constitute legal advice for particularized facts. Individual articles may be copied in their entirety with attribution. For other requests or further information, please contact Traci Mott at 202-434-4174 or by email at mott@khlaw.com.

Electric Power Generation, Transmission, and Distribution

In an attempt to reduce fatalities among power line workers, the Occupational Safety and Health Administration ("OSHA") is planning to overhaul its 30-year old safety standards that regulate the construction and maintenance of electric power generation, transmission and distribution equipment. These changes, which are likely to have a significant impact on electric utility and telecommunications company employers, are expected to be proposed in June, 2005.

What The Proposed Changes Would Do

OSHA is proposing to adopt a new Construction standard covering electric power generation, transmission and distribution facilities that would generally copy the requirements found in its existing General Industry standard covering electric power generation, transmission and distribution facilities (at 29 CFR Section 1910.269). OSHA claims that these changes to its Construction standards, although substantial on paper, will have little effect on the industry because the industry is already following those practices. While that may be the case, it leaves one wondering why OSHA did not adopt a single standard for both sectors in the first place. We urge those who would be affected to study this issue carefully and, if you disagree with OSHA's conclusion, be prepared to comment on the proposal and explain why there are differences between construction and maintenance activities not adequately accounted for in the proposal.

In addition to this substantial change in the basic Construction requirements for the industry, OSHA will propose several new requirements that would apply both to electric power General Industry and Construction. It is these changes that OSHA estimates will impose the greatest costs on the electric power and related industries. OSHA's proposed rules likely would require utility employers, among other things, to:

- Perform a comprehensive, system-wide arc-flash assessment for the purpose of determining the potential worker exposure to flames or electric arcs and heat energy, and then develop appropriate protective measures including the selection of appropriate personal and other protective equipment required for various tasks.
- Select flame retardant clothing appropriate for that energy level and *pay to outfit employees with this clothing.*
- Evaluate the safety records of contractors before hiring them to perform work around electrical equipment.
- Report non-compliance with OSHA requirements to the contractor, take appropriate measures to correct the violative conditions, note any contractor's failure to correct violative conditions, and consider such failures in future evaluations.
- Conduct additional training of employees and expand job briefings.

To the extent some of these requirements (from NFPA 70E) are not in the existing General Industry standard (Section 1910.269), OSHA is expected to propose "conforming amendments" to add them to that standard.

What Utility Company Employers Should Do

Employers in the electric utility and telecommunications fields should be aware that the proposed changes could have a significant impact on their operations. OSHA will accept comments on the proposed changes when they are announced, and affected employers will want to participate in this process. Keller and Heckman attorneys are closely monitoring any developments in this area, and will be among the first to obtain the proposed rules when they are published. In the meantime, utility and telecommunications industry employers are encouraged to contact David Sarvadi (202-434-4249; sarvadi@khlaw.com), Larry Halprin (202-434-4177; halprin@khlaw.com) or Tom Magee (202-434-4128; magee@khlaw.com) if you would like to participate in this proceeding or have any questions.