



# OSHA 30/30<sup>®</sup>

A thirty minute update on OSHA law every thirty days

**with Manesh Rath**



## OSHA'S RECENT GUIDANCE ON THE SILICA STANDARD FOR THE CONSTRUCTION INDUSTRY

September 26, 2018  
1001 G Street NW, Ste. 500 W,  
Washington, D.C.



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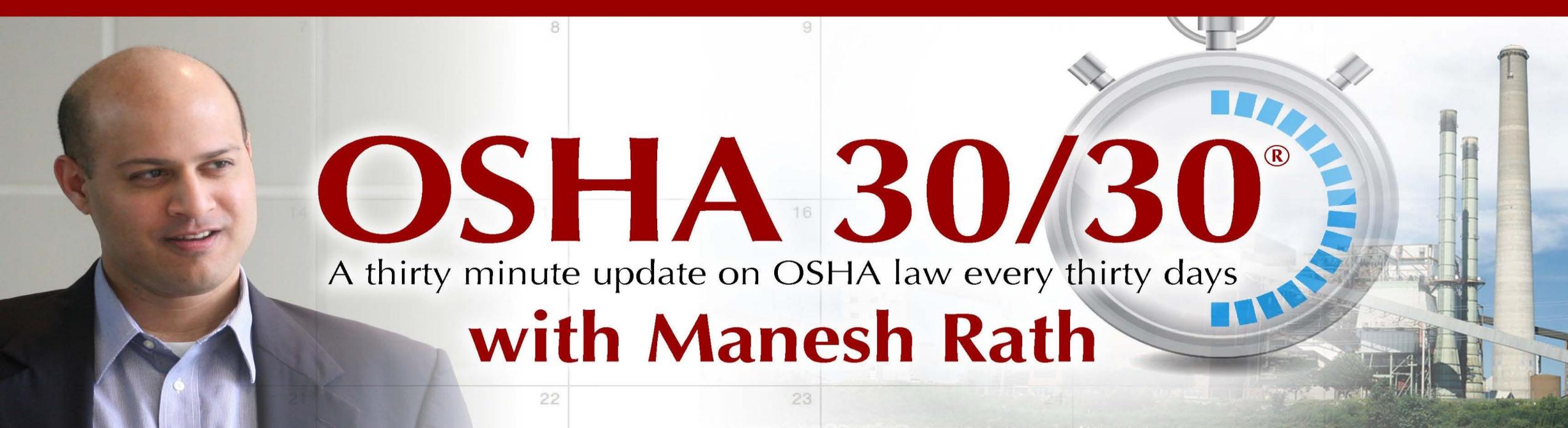
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# MANESH K. RATH

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. He has been quoted or interviewed in *The Wall Street Journal*, Bloomberg, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," and C-SPAN.

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.

He was voted by readers to Smart CEO Magazine's Readers' Choice List of Legal Elite; by fellow members to The Best Lawyers in America 2016, 2017 and 2018; selected by Super Lawyers 2016 – 2017, 2017 – 2018; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



# JAVANEH S. NEKOOMARAM

Javaneh Nekoomaram is an associate in the environmental and workplace safety and health (OSHA) practice groups at Keller and Heckman. Ms. Nekoomaram practices in all areas of environmental law as well as occupational health and safety law, and chemical control law. She routinely advises clients on a broad range of environmental health and safety compliance issues.

Prior to joining Keller and Heckman, Ms. Nekoomaram served for three years as Counsel for the American Coatings Association. She provided regulatory compliance and advocacy on a number of issues on behalf of the coatings industry including TSCA, Prop 65, hazard communication and labeling, state chemical regulation, hazardous waste, air and water quality, occupational health and safety, and chemical safety regulations. She also served as Advocacy Counsel for the Graffiti Resource Council, an organization supported by the aerosol coatings industry that provides anti-graffiti strategies for cities across the country.



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# TOPICS TO BE DISCUSSED

- Overview of requirements in silica standard for construction industry
- Questions and issues facing construction industry about the silica standard
- Discussion of recent OSHA FAQs for construction industry
- Impact of FAQs on compliance with silica standard
- What employers should do



# SILICA RULE REQUIREMENTS FOR CONSTRUCTION INDUSTRY

- Standard requires:
  - Exposure assessment (unless use exposure control methods established in Table 1)
  - Respiratory protection
  - Housekeeping
  - Written exposure control plan
  - Medical surveillance
  - Hazard communication and training
  - Recordkeeping

# SILICA RULE REQUIREMENTS FOR CONSTRUCTION INDUSTRY: EXPOSURE CONTROL METHODS

- Table 1 identifies 18 common construction tasks that OSHA believes generate high exposures to RCS
  - For each task, table specifies engineering controls, work practices and respiratory protection
- Employers who comply with Table 1 are not required to do exposure assessment to verify that exposure levels are below the PEL

# SILICA RULE REQUIREMENTS FOR CONSTRUCTION INDUSTRY: COMPLIANCE DATES

- Original compliance date of 6/23/17 moved to 9/23/17:
  - Must comply with all obligations of the standard except methods of sample analysis.
  - For first 30 days, OSHA offered compliance assistance in lieu of enforcement for employers who make good faith efforts to comply
- 10/19/2017: OSHA issued interim enforcement guidance
- 6/23/2018: Comply with methods of sample analysis

# QUESTIONS AND ISSUES FACING CONSTRUCTION INDUSTRY

- Not enough time to comply
  - General industry had approx. 2 years to comply whereas construction industry had only 1 year
- Confusion over:
  - What activities are outside of the scope of standard
  - What activities fall under Table 1
  - How to comply with certain exposure control methods
  - Ambiguities in regulation

# FAQs FOR CONSTRUCTION INDUSTRY

- 8/22/18: OSHA released 53 FAQs developed in coordination with industry and unions
- FAQs provide guidance to employers and employees on construction standard's requirements
- FAQs address all sections of the construction standard other than respiratory protection



# FAQS FOR CONSTRUCTION INDUSTRY

- **FAQ 1: Has OSHA identified tasks likely to be outside the scope of the standard because they generate exposures below the action level? Yes:**
  - Mixing small amounts of mortar
  - Mixing small amounts of concrete
  - Mixing bagged, silica-free drywall compound
  - Mixing bagged exterior insulation finishing system (EIFS) base and finish coat
  - Removing concrete formwork
  - Tasks where employees are working with silica-containing products and are handled while wet

# FAQS FOR CONSTRUCTION INDUSTRY

- **FAQ 2: Does the standard cover employees who perform silica-generating tasks for only 15 minutes or less a day?**
- No exemption for short-term exposures
- But, in many cases, employees who perform tasks for short periods of time in isolation of activities that generate significant silica exposure will be exposed below the action level
- Short term exposures would have to be very high to go above the action level (i.e. abrasive blasting and grinding)

# FAQS FOR CONSTRUCTION INDUSTRY

- **FAQ 3: If employees are not covered by the standard because their exposures will remain below the action level under any foreseeable conditions, does the employer need to document this determination?**
- No requirement to document these determinations
- An employer may document for its own purposes



# FAQS FOR CONSTRUCTION INDUSTRY

- **FAQ 9: Does the silica standard require the employer to follow every element of the tool manufacturer's instructions?**
- No, the silica standard requires employers to follow manufacturer instructions that are related to dust control....

# FAQS FOR CONSTRUCTION INDUSTRY

- **FAQ 11: Some entries on Table 1 require the use of a dust collection system that provides, at a minimum, the air flow recommended by the manufacturer. Does the standard require employers to conduct their own air flow assessments to ensure compliance with this requirement?**
- No. Employers may normally rely on statements made by the manufacturer of equipment to determine compliance. Employers do not need to perform their own testing to determine if a dust collection system functions at the level required by the standard....

# FAQS FOR CONSTRUCTION INDUSTRY

- **FAQ 14: For a few tasks on Table 1, respirator requirements vary based on task duration, i.e., whether the task is performed for “less than or equal to four hours/shift” or “greater than four hours/shift.” Does the employer have to track the exact amount of time?**
- **No. The employer must make a good faith judgment**

# FAQS FOR CONSTRUCTION INDUSTRY

- **FAQ 15: Is an employer following Table 1 required to “minimize dust emissions”? What does it mean to “minimize dust emissions”?**
- Many Table 1 entries require employers to:
  - Operate and maintain tools in accordance with manufacturer’s instructions to minimize dust emissions
  - Operate and maintain machines to minimize dust emissions
- However, the standard does not separately require employers to minimize dust emissions

# FAQS FOR CONSTRUCTION INDUSTRY

- **FAQ 17: Are handheld powered demolition hammers with bushing tools covered by Table 1?**
  - OSHA considers handheld powered demolition hammers with bushing tools to be a type of handheld powered chipping tool
  
- **FAQ18: Are tile saws covered by Table 1?**
  - OSHA considers handheld tile saws to be handheld power saws
  
- **Is Table 1 a prescribed list of equipment?**

# FAQS FOR CONSTRUCTION INDUSTRY

- **FAQ 35: What are the standard's requirements for reviewing and evaluating the effectiveness of the written exposure control plan?**
- (1) Determine if it continues to accurately describe all current conditions/scenarios at the worksite;
- (2) A discussion with the competent person(s)
- (3) A discussion with a sample of employees

# WHAT EMPLOYERS SHOULD DO

- Evaluate activities to determine if within scope of Table 1
- Keep in mind that the FAQs are guidance and not a standard or regulation
- Look out for upcoming RFI addressing revisions to Table 1 and comment



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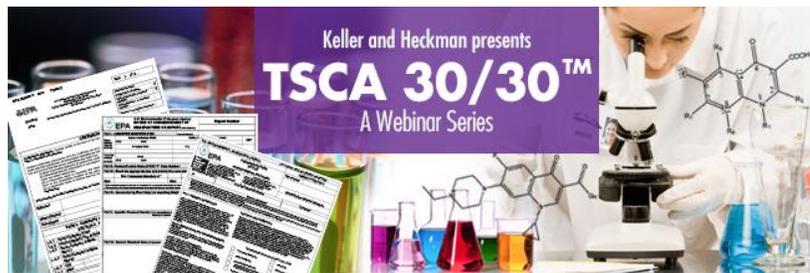
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