



OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with **Manesh Rath**



OSHA'S LOCKOUT/TAGOUT STANDARD REQUEST FOR INFORMATION

July 17, 2019
1001 G Street NW, Ste. 500 W,
Washington, D.C.

KH[®] KELLER AND HECKMAN LLP
SERVING BUSINESS THROUGH LAW AND SCIENCE[®]

www.khlaw.com

Presented by:

Manesh K. Rath

Partner

rath@khlaw.com

Lawrence P. Halprin

Partner

halprin@khlaw.com

Copyright © 2019

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.



LAWRENCE P. HALPRIN

Lawrence 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.



Lawrence Halprin

Partner

halprin@khlaw.com

202-434-4177



OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with Manesh Rath



Please Don't Forget to Dial-In:

Conferencing Number: (800) 768-2983

Access Code: 434 4318

(View the slides via webinar, and the sound via phone, above)

**An audio recording and slide deck will be provided post-webinar on
www.khlaw.com/osha3030**



www.khlaw.com

Copyright © 2019



OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with Manesh Rath

**View the entire library of prior
OSHA 30/30s here:**

www.khlaw.com/OSHA3030



TOPICS TO BE DISCUSSED

- Background on OSHA's Lockout Tagout (LOTO) Standard
 - Relevant case law and exceptions to the Standard
- OSHA's recent LOTO Standard Request for Information (RFI)
- Revised Standard – issues and impacts
- What Employers should do

BACKGROUND – LOTO STANDARD

- LOTO Standard – 29 C.F.R. § 1910.147
 - “Establishes requirements for the control of hazardous energy during servicing and/or maintenance of machines and equipment when the **unexpected** energization or start up of the machines or equipment, or release of stored energy, could harm employees.”
- OSHA RFI:
 - “LOTO standard requires that all sources of energy ... be controlled during servicing and maintenance of machines and equipment using an energy-isolating device (EID).”
 - “Currently, control circuit type devices are specifically excluded from OSHA's definition of an EID and are thus not a compliant method of controlling hazardous energy during service and maintenance activities.”

LOTO APPLICABILITY

■ *Exceptions*

- *Minor Servicing Activities*
- *Testing and Positioning Activities*
- *Infeasibility and greater hazard*

■ *Exemption*

- *OSHA: Measures that prevent or eliminate exposure to hazardous energy*
- *Case law: Measures that prevent or eliminate hazardous exposure to unexpected energization, start-up or release of stored energy*

LOTO EXCEPTION – MINOR SERVICING

- Criteria for Minor Servicing Activities:
 - Performed “during normal production operations”
 - Routine, repetitive, and integral to use of equipment
 - Alternative measures provide “effective protection.”
- Examples:
 - Changing drill bits
 - Clearing certain types of paper jams; minor cleaning, lubricating and adjusting operations; certain plate and blanket changing tasks; and some paper webbing and paper roll changing on printing press and binding equipment.

LOTO EXCEPTION – MINOR SERVICING

- Permissible Alternative Protection Measures:
 - control circuits with control logic such as an interlocked arrangement which provides a single operator with exclusive control
 - inch-safe-service technique used for the main drive control provides alternative effective protection for minor servicing activities on printing presses
- Multiple employees
 - Different task (Minor Servicing) v. same task (not Minor Servicing)
- 1th hour addition to standard by OMB based on economic feasibility
- Don't want to have limits on exception and ability to rely on control circuits based on labels rather than risk

LOTO EXCEPTION – TESTING AND POSITIONING

■ Criteria:

- When cannot perform necessary activity without power
- Alternative measures provide “effective protection”

■ Application

- Some set up activities

- Shortcoming: impractical, fall back on infeasibility or greater hazard

LOTO EXEMPTION – GM-DELCO CASE

- Scope: “when the **unexpected** energization or start up of the machines or equipment, or release of stored energy, could harm employees.”
- *GM-Delco* (6th Cir. 1996) – LOTO standard only applies when an employee performing servicing/maintenance of machines or equipment:
 1. Is endangered by a machine that can UNEXPECTEDLY (accidentally or inadvertently) energize, start up, or release stored energy; AND
 2. There is no adequate warning mechanism to alert employees of that event.
- *GM-Delco* Consequence: If control circuits eliminate potential for unexpected energization of machines or equipment, LOTO standard does not apply.

2019 LOTO REQUEST FOR INFORMATION (RFI)

- Requests information on:
 1. Use of reliable control circuit type devices in lieu of EID when control circuit devices are “at least as safe” as EID
 2. Robotics – should LOTO apply to robot use?
- Intended to lead to a LOTO Standard revision
- Published May 20, 2019 – 84 Fed. Reg. 22756 – Docket No. OSHA-2016-0013
- Information/comments due August 19, 2019

REVISION ISSUES – REMOVING “UNEXPECTED”

1. Anticipated removal of word “unexpected” from Standard
 - “Unexpected” is used eight times in current standard, qualifies and limits applicability of standard (*GM-Delco*)
 - Removal of “unexpected” would expand LOTO applicability to all potential hazardous energizations or start-ups of equipment (rendering *GM-Delco* meaningless)
 - Could require installation and/or use of EIDs for many more activities at a substantial cost

REVISION ISSUES – CONTROL CIRCUIT REQUIREMENTS

2. How will OSHA and Employers verify and determine whether a control circuit system meets the requirements of a revised LOTO Standard?
- OSHA has referenced standards with which compliance is complex and costly:
 - “Safety integrity level” – IEC 61508:2010 and IEC 62061:2015
 - “Performance level” – ISO 13849-1
 - Compliance with ANSI Z244.1-2016
 - Compliance with ANSI/RIA R15.06-2012 (Robot Systems)

REVISION ISSUES – CONTROL CIRCUIT REQUIREMENTS

■ Nucor Steel (2016) Variance

- Took 2 years to review and approve a “LOTO variance” for one task at one site
- OSHA made many rigorous safety determinations before approving a variance based on comprehensive risk assessments
- Suggests that OSHA could adopt a high standard for alternative controls with requirements similar to those met for variance

REVISION ISSUES – COST

3. Compliance with a revised standard could be costly
 - Applies to more activities
 - Control circuits may have to meet a higher standard to be considered compliant
 - Will new standard be applicable to minor servicing/testing/positioning?
 - Retrofitting/phase-in schedule?
- RFI states intent to “better promote worker safety without additional burdens to employers” and asks for specific information regarding economic impacts

WHAT EMPLOYERS SHOULD DO

- Survey current equipment and tasks currently performed by relying on control circuits
- Submit information and comments by August 19, 2019:
 - Responsive to OSHA's specific questions regarding control circuit devices, applicability to robotics, and economic impacts
 - Additionally, regarding expanded LOTO applicability (“unexpected”), necessary exceptions to LOTO applicability, appropriate control circuit safety standards, and means for OSHA to verify compliance and for employers to determine compliance

MORE FROM THE OSHA 30/30:



Catch Manesh Rath on Twitter:
@RathManesh



Listen as a Podcast:

The OSHA 30/30 is now available as a Podcast!

Find it here:

- Khlaw.com/osha3030
- Or on any podcast streaming service (iTunes, Podcast Addict)



Connect with us on LinkedIn:

1. Manesh Rath, David Sarvadi, Larry Halprin, Javaneh Nekoomaram, John Gustafson
2. Keller and Heckman Workplace Safety and Health



OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with Manesh Rath



**Please join us
at 1:00 PM Eastern U.S.**

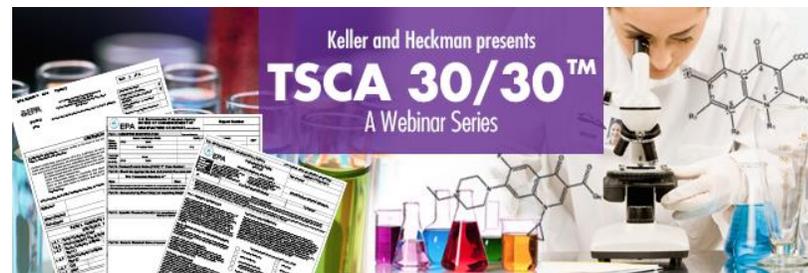
August 21, 2019

www.khlaw.com/OSHA3030





Please join us at 1:00 PM Eastern U.S.
August 21, 2019
www.khlaw.com/OSHA3030



Please join us at 1:00 PM Eastern U.S.
August 14, 2019
www.khlaw.com/TSCA-3030



Please join us at 1:35 PM Eastern U.S.
August 14, 2019
www.khlaw.com/REACH-3030



Thank you!

Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001

(202) 434-4182
rath@khlaw.com



Manesh Rath
Partner
rath@khlaw.com
202-434-4182



Lawrence Halprin
Partner
halprin@khlaw.com
202-434-4177

