



OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with **Manesh Rath**



CORONAVIRUS UPDATE

May 20, 2020

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



www.khlaw.com

Presented by:

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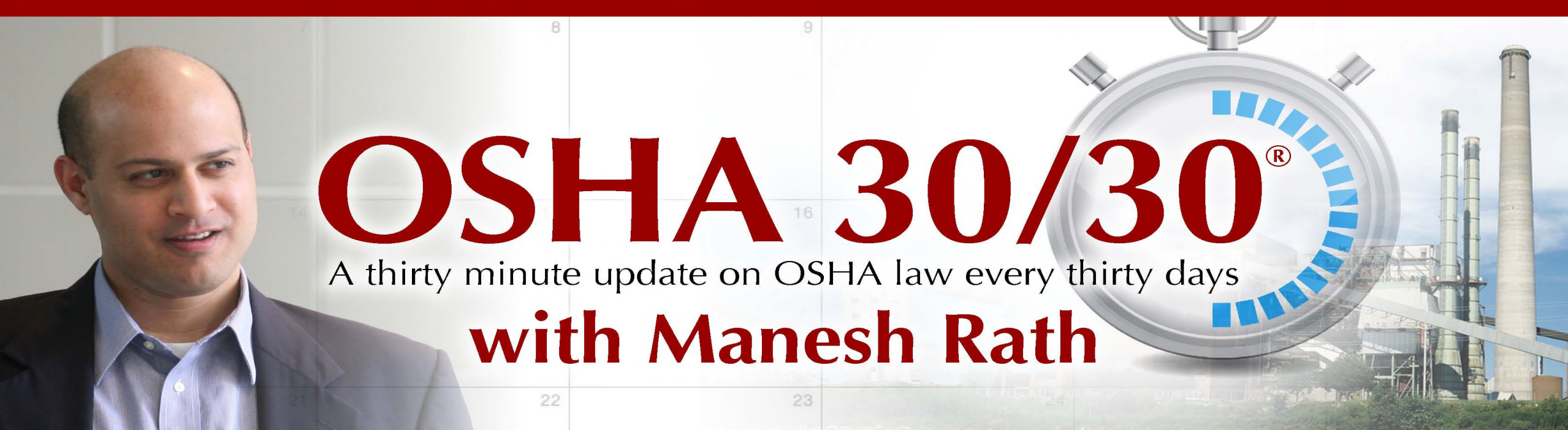
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MANESH K. RATH

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.



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TAYLOR D. JOHNSON

Taylor Johnson is an environmental lawyer specializing in the area of environmental regulation of products, including chemical control, pesticides, energy efficiency regulation, and importantly, domestic and international transportation of hazardous materials. Mr. Johnson also advises clients on community-right-to-know laws, Proposition 65, occupational safety and health matters, and supports a wide variety of commercial tort and other litigation issues.

Mr. Johnson has special expertise in the area of hazardous materials transport, including enforcement defense and compliance counseling. Mr. Johnson helps companies secure competent authority approvals, special permits, and letters of interpretation from regulatory authorities around the world. He has also prepared successful petitions to PHMSA on behalf of shippers seeking regulatory relief.

Prior to joining Keller and Heckman, Mr. Johnson promoted the development of energy and environmental legislation and policy at the state level.



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This program is based on agency guidance published as of the date of this presentation. This information is relevant to the time in which the information was published by the agency. This program is intended to be a summary of key points from agency COVID-19 policies and the information presented should not be relied upon in isolation or construed as legal advice.

Agency policies continue to evolve throughout the COVID-19 pandemic. Consult legal counsel and continue to review agency updates to stay current on the latest COVID-19 guidelines.



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TOPICS TO BE DISCUSSED

- OSHA/DOL Updates and Recent Enforcement
- New EEOC Guidance
- CDC Changes
- Congressional Proposals
- State Updates
- What Employers Should Do

OSHA/DOL INDUSTRY SPECIFIC GUIDANCE

- OSHA has issued specific COVID-19 guidance for the following industries
 - Construction (4/21)
 - Meatpacking and Processing (4/26)
 - Restaurant, and Food and Beverage Delivery (5/1)
 - Dental Practitioners (5/11)
 - Taxi/Rideshare/Car Service Safety (5/14)
 - Nursing Home and Long-Term Care Facilities (5/14)
 - Retail Pharmacies (5/14)

EXAMPLE INDUSTRY GUIDANCE - CONSTRUCTION

- OSHA issued COVID-19 Guidance for Construction Workforce (April 21, 2020)
 - Normal PPE use should continue alongside COVID-19 PPE
 - Avoid sharing tools
 - If tools must be shared, provide workers with alcohol-based wipes to clean tools before and after use
 - Toolbox talks and safety meetings should be kept as short as possible, while maintaining social distancing

EXAMPLE INDUSTRY GUIDANCE - MEATPACKING

- OSHA issued COVID-19 Guidance for Meatpacking and Processing Industries (April 26, 2020)
 - Modify workstation alignment so workers are six-feet apart in all directions
 - Use physical barriers, such as strip curtains or plexiglass, to separate meat and poultry processing workers when possible
 - Wipe down tools or other equipment at least as often as workers change workstations

OSHA/DOL - RESPIRATORS

- New guidance on decontaminating disposable N95 filtering face piece respirators (April 29, 2020)
 - Approved decontamination methods include vaporous hydrogen peroxide, ultraviolet germicidal irradiation, and moist heat
 - The following methods are not approved by DOL: autoclaving, dry heat, soap, isopropyl alcohol, dry microwave irradiation, chlorine bleach, disinfectant wipes, and ethylene oxide
- OSHA released a new video and poster on how to properly wear and remove a respirator (May 6, 2020)

OSHA/DOL - PAID LEAVE ENFORCEMENT

- DOL announced on April 20, 2020 that temporary non-enforcement of COVID-19 paid leave had ended
 - Emergency Paid Sick Leave Act (EPSLA) mandates businesses with less than 500 employees provide COVID-related paid leave
 - Tucson, Arizona electrical company ordered to pay \$1,600 in back wages (4/23)
 - Anaheim, California tire company ordered to pay \$2,606 in back wages (4/29)
 - Avon, Indiana trucking company ordered to pay \$3,017 in back wages (5/12)
 - Maui, Hawaii food retailer ordered to pay \$800 in back wages (5/13)

OSHA/DOL - PAID LEAVE ENFORCEMENT EXAMPLE

- Discount Tire Centers - \$2,606 in back wages
- Employee was advised by doctor to self-quarantine while awaiting a family member's test for COVID-19
- Employee requested paid leave under the EPSLA for the time he spent at home per doctor's instructions
- Employer denied the request, mistakenly believing employee had to submit proof of positive coronavirus test to qualify

EEOC

- March 21, 2020 Guidance Revised
 - Now permissible to ask medical questions about any symptoms related to COVID-19
 - Employers can administer COVID-19 tests before employees enter the workplace
 - Follow CDC guidelines for steps employers should take re: COVID-19 testing
 - Results of medical testing must be kept confidential

CDC - UPDATES

- List of COVID-19 symptoms revised
 - Symptoms may appear 2-14 days after exposure
- CDC revises guidance re: home isolation periods (May 3, 2020)
 - Stay at home isolation period extended from 7 to 10 days since symptoms first appeared, or first positive test
 - Potentially exposed employees with no symptoms or positive tests should remain at home for at least 14 days

CDC - GUIDANCE FOR ENDING HOME ISOLATION (MAY 3)

- Symptomatic employee who has not been tested can return to work if:
 - 3 full days of no fever **and**
 - Respiratory symptoms have improved **and**
 - At least 10 days since symptoms first appeared
- Symptomatic employee who has been tested can return to work if:
 - No fever **and**
 - Respiratory symptoms have improved **and**
 - Two negative tests in a row (24 hours apart)

CDC - RETURN TO WORK CRITERIA FOR EMPLOYERS (MAY 6)

- Employers seeking to resume normal or phased business operations should:
 - Conduct daily health checks
 - Conduct hazard assessment of workplace
 - Encourage employees to wear cloth face coverings (not considered PPE)
 - Implement social distancing in the workplace
 - Improve building ventilation system

CDC - CRITICAL INFRASTRUCTURE GUIDANCE (MAY 6)

- Home isolation may still be preferred option for exposed workers – actively encourage sick employees to stay home
- Minimize number of workers at worksites
- Anticipate and monitor staff absences due to illness
- Pre-screen employees and perform regular medical monitoring
- Immediately send any employee who becomes sick during the day home or to seek further care from a healthcare provider

CDC & EPA

- CDC and EPA released joint guidance for cleaning and disinfecting public spaces, workplaces, businesses, schools and homes (April 29, 2020)
 - First, clean the surface or object with soap and water
 - Then, disinfect using an EPA-approved disinfectant
 - If an EPA-approved disinfectant is unavailable, you can use 1 / 3 cup of bleach added to 1 gallon of water, or 70% alcohol solutions to disinfect.

CONGRESSIONAL PROPOSALS

- House passed the Health and Economic Recovery Omnibus Emergency Solutions Act (H.R. 6800 or HEROES Act) on May 16, 2020
 - Requires OSHA issue standards to mandate that workplaces develop and implement CDC infection control plans
- COVID-19 Every Worker Protection Act of 2020 (H.R. 6559) was introduced on April 21, 2020
 - Requires OSHA promulgate an emergency temporary and permanent infectious disease standard
 - Protects workers from retaliation for reporting infection control problems and using their own PPE

STATES - CALIFORNIA

- Executive Order N-62-20 signed by Governor on May 6, 2020
 - Any COVID-19-related illness is now presumed to arise out of and in the course of employment if:
 - Positive test or diagnosis within 14 days of going to work (physical office, not home) on or after March 19, 2020
 - Diagnosis performed by licensed physician
 - Employer can't require employee to draw down paid sick leave

WHAT SHOULD EMPLOYERS DO

- Identify critical job functions and cross-train employees in these areas
- Ensure that sick leave policies are flexible and consistent with federal and state guidelines
- Important to monitor if state stay-at-home orders are being extended or modified
- Develop a written coronavirus response plan covering leave, distancing and remote work, precautions, disinfection and sharing policies

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Catch Manesh Rath on Twitter:
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**Please join us
at 1:00 PM Eastern U.S.**

June 17, 2020

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