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A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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OSHA Released New Guidance on the PSM Standard. How Could This Affect You?

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Manesh Rath

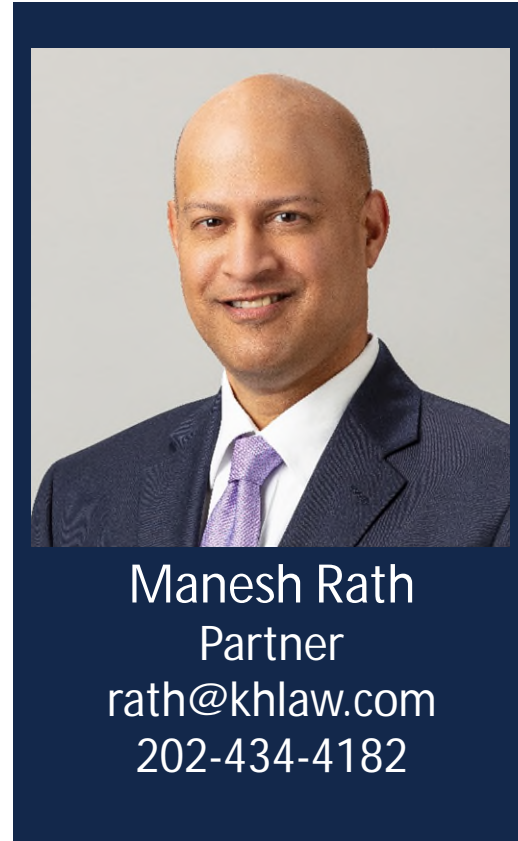


Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

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.



Taylor 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.



Topics to be Discussed

- ◆ Factual Background
 - PSM Standard Overview
 - Rulemaking Update
 - New PSM Enforcement Manual
- ◆ Question and Answer
- ◆ What Employers Should Do
- ◆ Off the Record

PSM Standard Background

- ◆ Process Safety Management (PSM) of Highly Hazardous Chemicals (29 CFR 1910.119)
 - ◇ First comprehensive revisions to enforcement guidance since 1994
 - ◇ Covers processes involving hazardous chemicals
 - Threshold quantities of flammable liquids and flammable gasses, as well as 137 listed highly hazardous chemicals
 - ◇ PSM is a “performance-based” standard
 - Outlines key features of safety programs for controlling highly hazardous chemicals
 - Employers with flexibility to tailor their safety programs to the unique conditions at their facilities

What is a “Process”?

- ◆ Section 1910.119(b) Definitions (“Process”)
- ◆ *Process* means any activity involving a highly hazardous chemical
 - Including use, storage, manufacturing, handling, or the on-site movement
 - Any group of vessels which are interconnected, and
 - Separate vessels which are located such that a highly hazardous chemical could be involved in a potential release shall be considered a single process



Rulemaking Update

- ◆ Pending rulemaking
 - ◇ Request for information in 2013
 - ◇ SBREFA process completed in 2016
 - ◇ Stakeholder meeting in October of 2022
 - ◇ OSHA is continuing to analyze comments



New PSM Enforcement Manual


- ◆ New PSM Enforcement Manual
 - ◆ Issued January 26, 2024
 - ◆ Replaces the 1994 compliance directive (OSHA Instruction CPL 02-02-045A)
 - ◆ Instructs OSHA enforcement personnel on the agency's interpretations of the PSM Standard
 - ◆ Within 60 days of effective date (by March 26, 2024) state plan states must adopt identical or more effective policies



Key Enforcement Changes


- ◆ Key changes include:
 - ◆ Removal of the Appendix A PQV Audit Checklist in the OSHA Instruction CPL 02-02-045A
 - Checklist for CSHOs when auditing a workplace
 - CSHOs will now rely on the NEP for the PSM standard for inspecting facilities
 - ◆ Incorporation of existing OSHA PSM enforcement policies into a question and response format






If the PSM standard applies to a process, does an employer have to comply with all provisions of the standard?

Are the quantities of flammable liquids (Flash Point < 100°F) and flammable gasses (Category 1) combined to determine if a threshold quantity (TQ) has been exceeded?



The PSM standard does not apply to “retail facilities”, Section 1910.119(a)(2)(i). Are there any industrial sectors or NAICS codes where OSHA will not enforce the PSM standard?



For determining PSM coverage, does “on site in one location” mean the process must be under the control of a single employer?

Does informing employees about the PSM program satisfy the Employee Participation Program (EPP) requirements under Section 1910.119(c)(2)?

Is there a time frame for completion of the initial process hazard analysis (PHA) and for updating and revalidating the PHA?

Can an employer use simplified loop diagrams, narrative descriptions, and flow charts to describe the logic of computerized process control systems and safety instrumented systems (SIS) to meet the requirements for written operating procedures at Section 1910.119(f)(1)?

Is the host employer of
a PSM-covered facility
responsible for the
safety of
subcontractors?

An existing facility has a pump and adds a spare pump that is piped in parallel with the existing pump. Does the employer need to conduct a pre-start-up safety review (PSSR)?

What Employers Should Do:

At federal level – continue to monitor rulemaking process

In state plan states – monitor for adoption of the PSM guidance or a more effective document (deadline for adoption is March 26, 2024)

Review Q/A section of new guidance for applicability to your operations

Update policies to no longer reflect the PQV Audit Checklist – change to NEP

PHA must be updated every 5 years and retained for the life of the process



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Thank You

Stick around for Off the Record

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