



OSHA 30/30[®]

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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Paper Company Failed To Establish That Lockout/Tagout “Minor Servicing Exception” Applied

May 21, 2025

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. He has been called to testify before Congress in several hearings relating to OSHA law.

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 interviewed in The Wall Street Journal, Bloomberg, Smart Money, Entrepreneur, on PBS's Nightly Business Report, and C-SPAN.

Mr. Rath served on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center and on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by fellow members to The Best Lawyers in America 2016-2025 (in 2024, was voted as Lawyer of the Year); selected by Super Lawyers 2016 – 2023; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



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Benjamin (Ben) Idzik advises Keller and Heckman clients on regulatory compliance matters under state and federal environmental, occupational safety and health, transportation, and employment laws.

Specifically, Ben assists clients on issues arising under the Occupational Safety and Health (OSH) Act, Federal Motor Carrier Safety Administration (FMCSA) regulations, and U.S. Environmental Protection Agency (EPA) regulations, such as the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Prior to joining Keller and Heckman, Ben focused on regulations affecting trade associations and their members. While in law school, Ben served as a legal intern for an advanced nuclear reactor and fuel company and was the Note & Comment Editor for the Catholic University Law Review. He also completed a clerkship at the Montgomery County Circuit Court.



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Topics to Be Discussed

- ◆ Facts of *Sofidel America v. Secretary of Labor*
- ◆ Elements of Establishing an OSHA Citation
- ◆ OSHA's Allegations
- ◆ Sofidel's Defenses
- ◆ Administrative Law Judge's Holding
- ◆ Sofidel's Appeal
- ◆ What Employers Should Do

Facts of the Case – Background

- ◆ Sofidel America operates manufacturing facility in Circleville, OH
- ◆ Uses an “R88 Line Gambini Rewinder”
- ◆ The R88 jams frequently during operation; stops automatically but does not de-energized
- ◆ Jams typically cleared by machine’s operator, often through “jogging”
 - ◆ Sofidel did not require operators lock out or tag out while jogging



Facts of the Case – Citation by OSHA

- ◆ In September 2021, two operators – Christian Hill and Dezmond Perkins – went inside the machine to clear a jam
- ◆ Perkins initiated a reverse jog; Hill suffered a serious hand injury
- ◆ Sofidel reported Hill's injury to OSHA, which then sent a CSHO to investigate
- ◆ CHSO issued six citations including two serious violations of the lockout / tagout standard; Sofidel timely contested



Establishing an OSHA Citation

- ◆ OSHA must prove, by a preponderance of evidence, that:

1) The standard applies to the cited condition;

2) The terms of the standard were violated;

3) One or more of the employees had access to the cited condition; and

4) The employer knew, or with the exercise of reasonable diligence could have known, of the violative condition

OSHA's Allegations

- ◆ The lockout tagout standard applied during the times the R88 was cleared of jams by operators
 - ◆ Machine was not de-energized
- ◆ Sofidel failed to require employees who operated the R88 to follow LOTO procedures when unjamming the machine



Sofidel's Defenses



- ◆ Unjamming was a routine part of operating the R88
- ◆ Minor servicing exemption applies
 - ◆ Sofidel cited to OSHRC case law stating that unjamming machines fell within the exception
- ◆ Hill's and Perkins' decision to both go inside the R88 and jog the machine to clear the jam was unpreventable employee misconduct

Administrative Law Judge's Holding

- ◆ The process of unjamming the R88 was subject to the lock out / tag out standard
- ◆ The minor servicing exception did not apply
- ◆ Sofidel knowingly exposed R88 operators who cleared jams to the potential release of stored energy
- ◆ Unpreventable employee misconduct doctrine did not apply even though Hill and Perkins violated company policy by both entering the R88 to clear the jam



Appeal to the Sixth Circuit

- ◆ ALJ issued decision on October 17, 2024; Sofidel appealed to the OSHRC, which denied review
- ◆ On January 23, 2025, Sofidel filed a petition for review with the US Court of Appeals for the Sixth Circuit
- ◆ Case fully brief by both Sofidel and OSHA; oral argument request by Sofidel



What Employers Should Do

- ◆ Evaluate duties assigned to employees to determine if they implicate OSHA standards
- ◆ Make certain that employees are adequately supervised
- ◆ Consistently monitor work and manage employees who violate company policies
- ◆ Apply lock out procedure for unjamming, repositioning, or reversing machinery





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at 1:00 p.m., Eastern Time

June 18th, 2025

www.khlaw.com/OSHA3030



Please join us at 10:00 AM Eastern U.S.

June 11th, 2025

www.khlaw.com/REACH-3030



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

June 11th, 2025

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Thank You

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