



OSHA 30/30®

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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Judge Rules on Revocability of Expedited Settlements

November 19, 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 2023, 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 Idzik



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 *Acting Sec'y of Lab. V. Avalos Home Improvements WI LLC*
 - ◇ Background
 - ◇ Inspection
 - ◇ Citation
- ◆ Intervention by Superior Safety Solutions
- ◆ Avalos' Arguments
- ◆ OSHA's Arguments
- ◆ ALJ's Decision
- ◆ What Employers Should Do

Background

- ◆ Small contractor headquartered outside of Milwaukee, Wisconsin
- ◆ On May 29, 2024, an OSHA compliance officer (CO) drove past a worksite where Avalos employees were re-roofing an apartment building
- ◆ The CO observed the employees working on the roof without fall protection, prompting a site inspection



Inspection

- ◆ Held an opening conference with Julio Avalos in English
 - ◆ Avalos was in charge of the worksite
- ◆ Avalos never indicated he did not understand English and CO later noted that nothing suggested that he had any difficulty understanding what was being said
- ◆ Closing conference was conducted in English and in Spanish



Citation

- ◆ On June 14, 2024, OSHA issued a citation under the construction fall protection standard alleging four serious violations with a proposed penalty of \$13,828
- ◆ The citation packet was in English
 - ◆ However, the cover letter also included a warning in Spanish, in bold, oversized font
- ◆ Cover letter indicated that Avalos had three options to respond to the citation



Citation

- ◆ The enclosed EISA allowed Avalos to settle the citation by paying a reduced penalty (\$9,679.60) and certifying abatement in exchange for waiving the right to contest
- ◆ Julio Avalos signed and faxed the EISA to OSHA on June 21
- ◆ OSHA counter-executed on June 24.



Intervention by Superior Safety Solutions

- ◆ On June 27, OSHA received an email from safety consultant, Superior Safety Solutions
 - ◆ Superior did not mention the executed EISA
- ◆ OSHA attempted to clarify
- ◆ Superior later submitted a second contest letter directly to the Commission
- ◆ OSHA filed a motion to dismiss the notice of contest
- ◆ Avalos filed an opposition through its “non-attorney representative,” Superior



Avalos' Arguments

- ◆ Entitled to relief under F.R.C.P 60(b)(3)
 - ◆ OSHA had clear notice Julio Avalos was not proficient in English
 - ◆ Avalos did not fully understand the EISA when he signed it
- ◆ Lack of supporting evidence
- ◆ Superior orally claimed lack of authority to sign



OSHA's Arguments

- ◆ Because the EISA was executed, it was a non-reviewable, “final order”
- ◆ Avalos failed to meet its burden of proof: no evidence of OSHA misconduct
- ◆ Supplied evidence of Julio Avalos's understanding and authority
- ◆ Even if Julio Avalos's understanding of English was limited, OSHA provided notice in Spanish



ALJ's Decision

- ◆ The executed EISA constituted a final order; Avalos failed to meet its burden of proof to obtain relief under Rule 60
- ◆ Evidentiary record was one-sided in OSHA's favor
 - ◆ OSHA persuasively showed that Avalos had opportunities to understand the citation and the EISA



ALJ's Decision

- ◆ Principles of general contract law support the EISA's validity
- ◆ Avalos either waived or abandoned the lack of authority argument
- ◆ **Motion to dismiss granted**
- ◆ Warning to Avalos's non-attorney representative in fn 5



What Employers Should Do

- ◆ Document authority and decision-making process for responding to citations
- ◆ Ensure employees authorized by your company to handle OSHA matters are sufficiently trained
- ◆ Address potential language issues proactively



What Employers Should Do

- ◆ Verify competence of both attorney and non-attorney representatives in OSHA matters
- ◆ Maintain robust recordkeeping system to preserve evidence for potential citation contests and settlement discussions
- ◆ Consider carefully whether an Expedited Informal Settlement Agreement makes sense in each case





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at 1:00 p.m., Eastern Time

December 17th, 2025

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Please join us at 10:00 AM Eastern U.S.
December 10th, 2025
www.khlaw.com/REACH-3030



Please join us at 1:00 PM Eastern U.S.
December 10th, 2025
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Thank You

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