



OSHA 30/30[®]

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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Judge Vacates OSHA Citation for Failure to Provide Fair Notice

February 18, 2026

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.



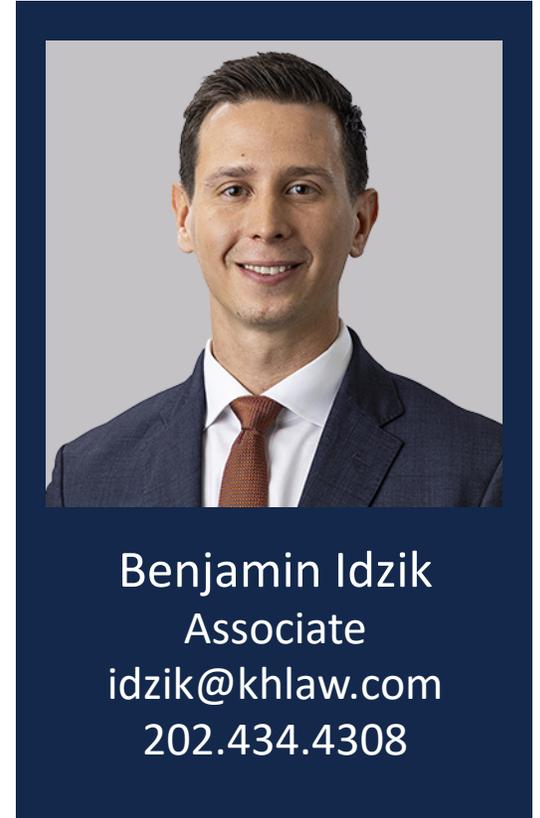
Benjamin Idzik



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.



Topics to Be Discussed

- ◆ Facts of *Sec'y of Lab. v. Brigade Energy Services LLC*
- ◆ Establishing Violation of an OSHA Standard
- ◆ Fair Notice Doctrine
- ◆ Preemption Principle
- ◆ OSHA's and Brigade's Arguments
- ◆ ALJ's Decision
- ◆ What Employers Should Do

Background

- ◆ Brigade was providing workover services during a plug-and-abandonment operation in Grassy Butte, ND
- ◆ Supported by KLX, which provided wireline operations
- ◆ KLX's perforation gun was loaded with explosives



The Incident

- ◆ On November 3, 2021, one of the Brigade workers held the cable portion of perforation gun to assist KLX
- ◆ A KLX worker connected loaded steel tube to the cable
- ◆ The steel tube detonated prematurely and injured three workers
- ◆ Citation issued under blasting and explosive agents standard, alternatively, under the general duty clause



Establishing Violation of an OSHA Standard

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

1) The standard applies to the cited condition;

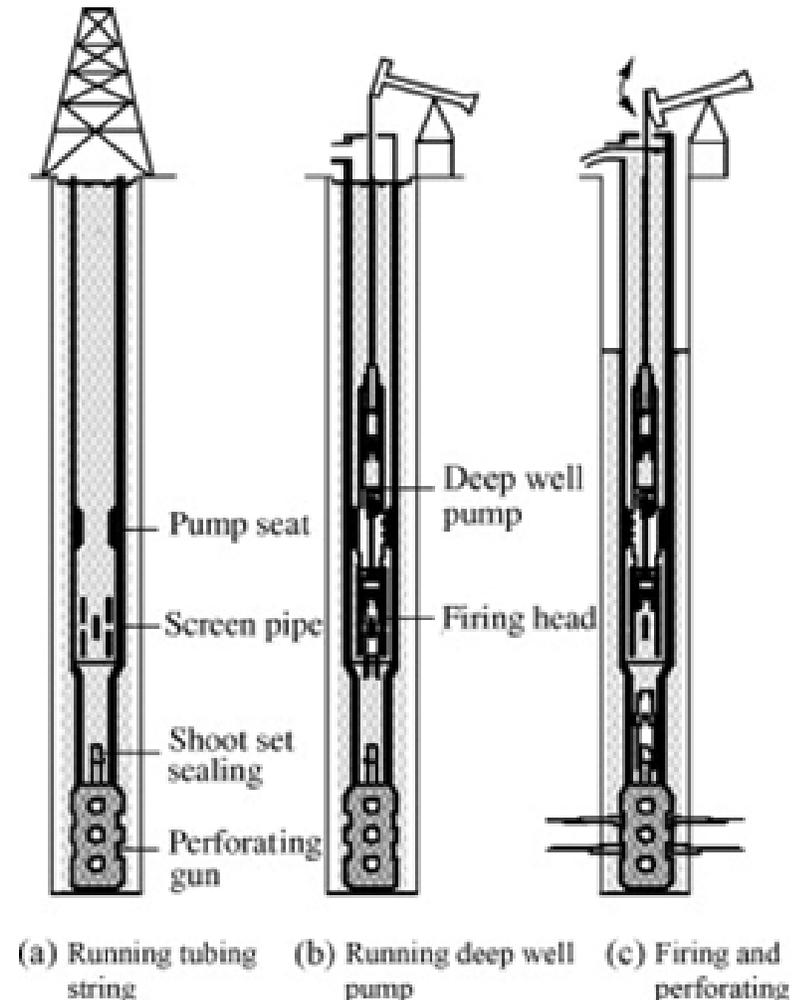
2) The terms of the standard were violated;

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

Fair Notice Doctrine

- ◆ Rule: Due process requires OSHA to identify:
 - ◆ (1) What the violative condition is, and
 - ◆ (2) When the violative condition existed
- ◆ Purpose: Give employer sufficient clarity to qualify as due process



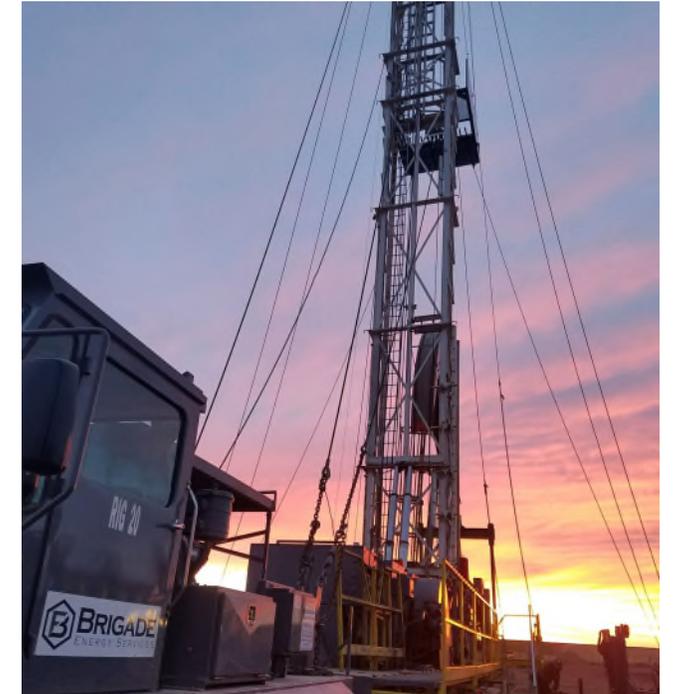
Preemption Principle

- ◆ Rule: When a specific OSHA standard applies to a hazard, OSHA cannot rely on the general duty clause for the same condition
- ◆ If a standard does not apply to a condition, then OSHA may use the General Duty Clause
- ◆ The agency may plead in the alternative



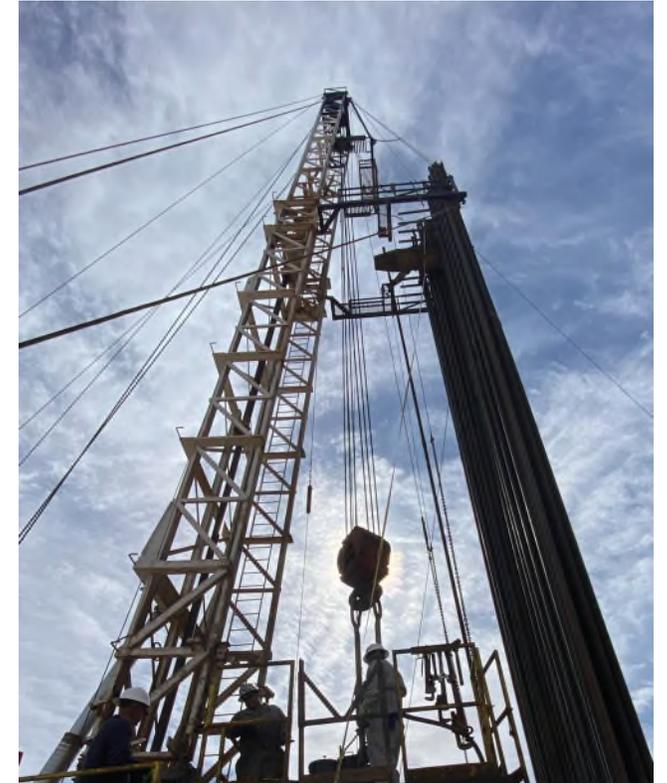
The Arguments

- ◆ OSHA: By permitting one of its workers to hold the cable to the wireline, Brigade created a hazard to both the worker and others in the area
 - ◇ During contest: Brigade assisted with lifting perforation gun into the well
 - ◇ Violated General Duty Clause in the alternative
- ◆ Brigade: The standard did not apply because, by holding the cable, the worker was not handling an explosive device
 - ◇ Even if the standard applied, the worker's handling of the cable did not create a hazard under the standard



ALJ's Decision

- ◆ Brigade did not have fair notice
- ◆ Standard applied because, once connected to the wireline, the steel tub was an explosive device
 - ◇ General duty clause thus could not support citation
- ◆ Even if fair notice was provided, OSHA did not prove that Brigade permitted an undue hazard within the meaning of the standard
 - ◇ No evidence that Brigade contributed to the explosion



What Employers Should Do

- ◆ Conduct independent post-incident investigation to verify OSHA's account of when alleged violation occurred
- ◆ Carefully review the legal basis under which a citation was issued
- ◆ Consider whether:
 - ◇ Alleged act or omission align with the alleged responsible party
 - ◇ Scope of standard applies to alleged hazard (and, if it does, consider applicability of GDC)
- ◆ Evaluate whether final presentation of evidence exceeds facts in alleged violation description





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at 1:00 p.m., Eastern Time

March 25, 2026

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Please join us at 10:00 AM Eastern U.S.
February 25th, 2026
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Please join us at 1:00 PM Eastern U.S.
February 25th, 2026
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Thank You

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