



LAW OFFICE OF ADELE L. ABRAMS P.C.

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Feds Eye Effectiveness of State Workers' Compensation Systems

By: Adele L. Abrams, Esq., CMSP

A new report by the U.S. Department of Labor (DOL) highlights the ways that monetary compensation and medical care for workers harmed in workplace accidents has been undermined in recent decades, and could signal a willingness to change its traditional "hands off" approach to these systems in the next administration. The U.S. Bureau of Labor Statistics estimates that, on an annual basis, nearly 3 million serious occupational injuries and illnesses occur, and approximately 4,500 workers are killed on the job.

Workers' compensation systems were created, in some cases, nearly a century ago, to provide the injured or ill worker with all lost wages, medical care, and rehabilitation costs under the principle that workers would receive timely benefits that would replace their lost wages in exchange for giving up the right to sue employers for their injury. It is typically a "no fault" system, meaning that a worker's own negligence in causing the injury is rarely a basis for disqualification from benefits (with narrow exceptions, such as impairment by alcohol or illegal drugs, or being the aggressor in a workplace violence situation).

Each state runs its own workers' compensation system, enacted by state legislatures in most cases, and employers are required to be insured in most states (although the size threshold that triggers this requirement can vary wildly). Many of the workers' compensation laws also include anti-discrimination provisions, protecting workers from retaliation, or blacklisting because they file or have a history of workers' compensation claims.

These state law protections can dovetail with the protections of Section 11(c) of the Occupational Safety & Health Act of 1970, the newly codified provisions in 29 CFR 1904.36 (anti-retaliation protections for injured workers included in the OSHA e-recordkeeping rule that takes effect December 1, 2016), and even the Americans with Disabilities Act.

A 2015 study by federal Occupational Safety & Health Administration (OSHA) found that current workers' compensation programs, on average, cover only about 20 percent of the total cost of workplace injuries. The injured worker, his/her family and private insurance pick up as much as 63 percent of actual costs, with the remainder covered by taxpayer-funded programs such as Social Security Disability Insurance.

The DOL report was initially triggered by investigative reports that questioned whether state workers' compensation programs adequately protect injured and sickened workers, followed by an official letter from 10 Democratic members of Congress seeking action.

The Congressional letter, dated October 20, 2015, observed (in part):

Since 2003, legislators in 33 states have enacted changes to workers' compensation laws that either reduce benefits or make it more difficult for workers to qualify for them. . . The race to the bottom now appears to be nearly bottomless, as some states are adopting "opt-out" laws which enable employers to set up their own ERISA-based workers' compensation programs where employers can establish certain exclusions, heightened thresholds for causality and abbreviated time periods for employees to report an injury. Often, where injured employees want to appeal an employer's decision or opt-out, plans permit an employer-controlled appeals process and injured employees could lose access to state

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Feds Eye Effectiveness, cont.

courts or workers' compensation commissions.

One problem, identified by both the DOL and Congress, is Federal court review of private Employee Retirement Income Security Act (ERISA) plans, which is constrained because courts cannot evaluate the adequacy of a plan's benefits. Review is limited to a determination of whether the employer's conduct was arbitrary and capricious in interpreting their plan.

From a federal perspective, there is concern over the shifting of workers' compensation actual costs. Programs covering the benefits gap include Social Security Disability Insurance, Medicare and Medicaid, and food stamps, which combined can cover the lost wages and medical costs that are no longer being adequately provided by workers' compensation due to declining awards and benefits. It is estimated that these costs amount to \$12 billion per year, from the employer/workers' compensation insurance carrier to the U.S. taxpayer.

The October 2016 DOL report describes factors that have undercut financial protections and medical benefits for injured workers including:

- Exclusionary standards that result in an increased rejection of claims;
- Procedural and evidentiary rules that create barriers for injured workers who file claims;
- Restrictions on types and duration of medical care for injured workers; and,
- Elimination of special funds to cover injured workers, such as situations where an employer failed to purchase workers' compensation insurance.

In the end, DOL concludes: "As the costs of work injury and illness are shifted, high hazard employers have fewer incentives to eliminate workplace hazards and actually prevent injuries and illnesses from occurring. Under these conditions, injured workers, their families and other benefit programs effectively subsidize high hazard employers. . . . The current situation warrants significant change in approach and action at the national, state, and private sector level."

In response to the DOL report, one of the Congressional authors of the 2015 letter – Sen. Sherrod Brown (D-OH) indicated he will sponsor legislation in the next session of Congress to address the problems identified by DOL. The next Secretary of Labor will no doubt be called upon to use this report as a guide to improving workers' compensation systems, to the extent that the federal government has the power currently, or is granted additional authority

in the future by Congress.

In response to the report, Labor Secretary Thomas Perez stressed: "A nation built on the dignity of work must provide for workers' safety, as well as take care of them if they get hurt on the job. When workers are hurt, a robust workers' compensation program can make the difference between poverty and recovery. It is time that we look at whether this basic bargain is fraying and how we fortify this critical lifeline for millions of working families."

See the full DOL [Report](#) for more details.

The Chemical Safety Board's Strategic Plan Reflects New Direction

By: Gary L. Visscher, Esq.

A previous newsletter article ([July 2014](#)) described the U.S. Chemical Safety and Hazard Investigations Board, or the CSB, a federal agency established in the 1990s to investigate the causes of industrial chemical accidents, fires, and explosions, and to make recommendations designed to prevent future similar accidents. The CSB does not have regulatory or enforcement authority, but does make recommendations for regulations to OSHA and the Environmental Protection Agency (EPA), as well as state and local governments.

At their best, CSB reports on chemical accidents have been welcomed by business, labor, government agencies, and by the communities and victims of chemical accidents, as impartial and thorough. Such reports not only give communities and victims an unvarnished account of what happened and why, but also provide a warning and guidance for others willing to use them for preventing accidents.

Under previous leadership, the CSB "went off the rails." Internal personnel and administrative actions and misconduct resulted in the chair of the CSB being twice called before the House Committee on Oversight and Government Reform, and bipartisan calls for him to resign. ([See Newsletter of July 2014](#)). Conflict among Board members and with others outside the agency, and an overall imperious tone and ready finger-pointing added to the agency's loss of credibility.

In the aftermath of that troubled and tumultuous period, the new leadership of the Board recently released a new five year Strategic Plan, covering the years 2017 through 2021. The Strategic Plan lists 3 overall goals: 1. Prevent recurrence of significant chemical incidents through independent investigations; 2. Advocate safety and achieve change through recommendations, outreach, and education; 3. Create and maintain an engaged, high-performing workforce.

Hopefully the new path set by the current leadership's Strategic Plan will be found through a more sober tone and

Chemical Safety Board, cont.

realistic tenor rather than its broad goals.

The new Plan reflects the fact that CSB's credibility and impact is primarily through the quality of its investigations and reports. The new Plan also begins with the objective of maintaining "objective, independent investigations that display technical rigor at all stages." Similarly, the new Strategic Plan emphasizes the importance of building and maintaining internal values and conduct – "Perhaps most importantly, we will work to support our greatest resource – the CSB staff – to champion the same continual improvement that we expect from the companies involved in our investigations."

Mine Operators – Responsibility, Authority, and Accountability ("RAA") By: Michael Peelish, Esq.

The matter being addressed in this article involves a citation issued by the Secretary of Labor to a small surface sand and gravel mine operator. The mine operator had sold a gravel stockpile to the county and only county employees were working to remove the gravel as they needed it for their purposes. Citations were issued under 30 CFR 56.3130 to both the mine operator and the county. The mine operator claimed that it was not responsible for maintaining the stockpile since it had sold the pile to the county. Wrong answer and Judge Miller was correct in upholding the citations issued by the inspector to both entities in a decision issued October 18, 2016.

This set of facts has been litigated many times and the standard applied by the Review Commission and its judges is well-settled. So, let's move on to what is really important -- miner safety. This article is entitled "RAA" for a reason. The mine operator clearly has Responsibility. The decisions of the Review Commission and the appellate courts have given the Secretary prosecutorial discretion and the Commission Judges are generally without authority to review the Secretary's discretionary decisions.

Now, the Secretary has provided guidance (referring to [Enforcement Policy and Guidelines](#) (hereinafter *Enforcement Guidelines*)) to its inspectors and mine operators on how inspectors will review matters in making their discretionary decision. The Enforcement Guidelines provide that enforcement action may be taken against a production operator for violations committed by its independent contractor in any of the following four situations:

- (1) when the production-operator has contributed by either an act or an omission to the occurrence of the violation in the course of the independent contractor's work, or
- (2) when the production-operator has contributed by either

- an act or omission to the continued existence of a violation committed by an independent contractor, or
- (3) when the production-operator's miners are exposed to the hazard, or
- (4) when the production-operator has control over the condition that needs abatement.

But once an inspector has made its decision to cite one or both entities for an alleged violation, for the most part the matter is over. So, the takeaway for mine operators is that Responsibility of the mine operator is present in all cases.

Now, we move to Authority. Typically, mine operators and independent contractors enter into agreements/contracts outlining each parties' obligations. This is an important step in the process that leads to critical discussions that eventually define the expectations of the parties. Said another way, who has what Authority to control any given situation. This is where the mine operator and the independent contractor must reach a clear agreement. In reaching this agreement, the mine operator must consider how it will enforce such contractual obligations of the independent contractor without increasing its liability for a given situation that could go awry. Let's take the case of the stockpile. The mine operator admitted that the stockpile was "unstable" but that it was not his Responsibility since Authority to remove the gravel from the stockpile had been given to the county. Again, a wrong conclusion.

Now we get to the final aspect – Accountability. How does a mine operator cause safety and health issues to be best managed under a contractual obligation without exposing itself to liability it has tried to allocate to an independent contractor? My experience is that the proper level of involvement by the mine operator reduces legal exposure/accountability. But more importantly, the proper level of involvement improves the safety and health of the miner. In my experience, the following actions have proven to be most effective:

- Before any work begins, conduct worksite meetings with the independent contractor setting forth the expectations regarding safety and health matters.
- Ensure the required examinations of workplaces and equipment are properly being done by the independent contractor.
- Ensure the independent contractor has competent supervisors at the worksite.
- Conduct periodic walk-thru inspections with the independent contractor to ensure the operator's expectations are being met.
- Conduct periodic review of the independent contractor's training records to ensure that its employees are properly trained.

Mine Operators-RAA, cont.

Too many times the lawyers get in the way and say don't do this or don't do that because it exposes the company to greater liability. Granted, even if a mine operator implements the suggestions above, it may not stop the Secretary from citing a condition or discourage a lawsuit because of an unfortunate incident. However, as a lawyer I would much rather be making a proactive argument that the mine operator took prudent measures in front of a judge. At the end of the day, let's not get lost in the legal morass of the issue, but rather let's step up to the plate and do what is best for the miner and others at the worksite. And that, my friends, is what Accountability is all about.

OSHA Rule to Expand Recordkeeping Enforcement Moves Forward

By: Gary L. Visscher, Esq.

The Obama Administration has signaled that it intends to issue yet another recordkeeping rule before leaving office. A final rule, called "Clarification of Employer's Continuing Obligation to Make and Maintain Accurate Records of Each Recordable Injury and Illness," was sent to the Office of Management and Budget (OMB) for final review in mid-October. OMB has 90 days to review the rule, but in practice, review may be shorter or longer.

The rulemaking involved is sometimes referred to as the "Volks rulemaking," because the purpose of the rule is to overturn a decision by the Court of Appeals for the D.C. Circuit, in *AKM LLC dba Volks Constructors v. Secretary of Labor*, 675 F.3d 752 (D.C. Cir. 2012).

The Court of Appeals held that section 9(c) of the OSH Act which states: ("No citation may be issued under this section after the expiration of six months following the occurrence of the violation.") means, as it says, that a citation for a recordkeeping violation must be issued within six months of when the failure to correctly or accurately record an injury or illness occurred. The Department of Labor had argued that it could treat a recordkeeping violation as a "continuing violation," making any failure to correctly record an injury or illness citable any time within the five years that employers are required to keep injury and illness records.

The Court of Appeals found that the Department of Labor's interpretation and policy was completely contrary to the language of the OSH Act. Referring to the Department of Labor's arguments, the Court of Appeals wrote: "Despite the cloud of dust the Secretary kicks up in an effort to lead us to her interpretation, the text and structure of the Act reveal quite a different and quite a clear congressional intent that requires none of the strained inferences she urges."

OSHA has acknowledged that the rule under review at OMB is intended to overturn the Court of Appeals decision, despite the fact that the Court based its decision on the "plain language" of the statute. If that seems contrary to how

things are supposed to work – that overturning a court's interpretation of the plain language of a statute is done by Congress amending the statute, not by the agency that is supposed to follow the statute – well, it is. Whether it will ultimately be successful remains to be seen. It is likely that if OMB clears the final rule and OSHA issues the rule, it will generate additional litigation.

The effect of a change in the statute of limitations on the overall completeness and accuracy of injury and illness records is unclear. In the proposed rule, OSHA estimated that a change in the statute of limitations would result in an additional 24,400 cases being recorded, or about 1% of the approximately 2.4 million such records made annually.

The Miners Protection Act – The Spin

By: Sarah Ghiz Korwan, Esq.

In early September, some 10,000 retired coal miners and their families rallied in Washington to get the attention of the U.S. Congress to support the Miners Protection Act. This legislation would extend pension and health benefits for United Mine Workers of America (UMWA) retirees. If the legislation is not passed, as many as 100,000 retirees (maybe more) could lose their benefits due to an insolvent pension system. On September 21, 2016, the bill made it out of the Senate Finance Committee and it now awaits vote from the full Senate. The UMWA's pension is insured by the Pension Benefit Guaranty Corporation, so it is unclear why the UMWA is seeking federal assistance.

But, just like a quarterback's pass or a tennis pro's forehand, there is plenty of spin. First, the advocates for this bill assert that the federal government promised mine workers health and pension benefits in 1946. The truth is, the federal government signed the Krug-Lewis Agreement in 1946 as a temporary fix. The Agreement covered the terms of employment in the mines, and helped establish initial funds for health and pension benefits, during a very brief period in which the federal government took control of the mines due to a miners' strike.

The government's involvement in the coal miners' pension and health care funding ended in 1947, when control of the mines was returned to the owners. Funding and management of the miners' retirement and health care benefits was then returned to the UMWA, which was responsible for establishing employers' contributions and benefits paid from the funds.

The source of funding for the Miners' Protection Act is also at the center of debate. The proponents of the legislation assert that the funding will come from the Abandoned Mine Land Reclamation Fund. However, the exact language in the Act is a bit more nebulous in that it provides funding through "eligible uses of interest" from the Fund and that the remaining funding will be made from "supplemental payments from the General Fund of the Treasury", as directed by the Act.

Miner's Protection Act, cont.

In other words, "eligible uses of interest" is undefined, and "General Fund of the Treasury" is a euphemism for taxpayer dollars. Opponents of the Act assert that the Fund is nearly insolvent, therefore, if the Act is passed, the Treasury will funnel money through the Fund, thus obscuring the fact that it is actually being funded by federal taxes. Moreover, opposition to the Act is adamant because this would mark the first time the federal government has bailed out a private-section pension plan, which could set a dangerous precedent.

As noted above, since the Act passed the Senate Finance Committee, it awaits Senate Majority Leader Mitch McConnell's delivery to the full Senate for vote. McConnell is not in favor of the Act, in large part because the UMWA supported his opponent in the 2014 election. However, McConnell hails from Kentucky, a coal producing state, so it's in his best interest to show some love. It is expected that the bill will be introduced in the Senate, as part of a larger bill, by the end of the year.

2016 Presidential Candidates and their Views By Jordan Posner, J.D.

With just weeks to go until the November 8th election, the three leading candidates, Hillary Clinton ("Clinton"), Donald Trump ("Trump") and Gary Johnson ("Johnson") have all, to varying degrees, discussed the issues of mining, environment, energy, fracking, and occupational and mine safety. These are summaries of their views.

On Mining:

In a CNN Town Hall last March, Clinton was quoted as saying that she would "put a lot of coal miners out of jobs." Clinton was scrutinized harshly for her remarks, in and around the mining industry. In reviewing her political stance on coal, Clinton believes the era of coal is behind us, and she wants to arm the coal workers and many more, with jobs in the renewable energy industry. Her plan states this will be done through placing solar panels on every home. She also has proposed a \$30 billion plan to increase job training, small business development, and infrastructure investment, especially in Appalachia, which will also safeguard miners' healthcare and pension.

Trump, on the other hand has promised to bring back jobs for coal miners. This promise is invigorating for an industry that is dwindling nationwide. Trump has not laid out a proposal on how he plans to help the industry other than slowing down or stopping the implementation of current regulations. In addition, it is suspected that Trump will fall in line with the Republican Party. This includes rolling back various labor regulations proposed by Speaker of the House Paul Ryan.

Gary Johnson has remained silent on mining throughout his campaign, with the exception of the following point. Applying his free market approach, Johnson states that "right now no new coal plants are going to be built given the price of natural gas... I'm afraid that coal, from a free market standpoint, has been done in."

On Environment/Energy:

Clinton seeks to make the United States the world's clean energy superpower. She also intends to cut energy waste in homes, schools, hospitals, and offices by a third, reduce oil consumption, and among other goals, create stronger efficiency and emission standards. Clinton has also hired Former Secretary of the Interior, Ken Salazar to head her transition team.

Recently, Trump released his economic plan for the future of his administration. Trump, who on numerous occasions discussed eliminating the Environmental Protection Agency, has since backed away from this stance, calling for overhaul of regulations. In particular, he would like to reduce funding and eliminate the Clean Power Plan which seeks to curb greenhouse gas emissions from power sources as well as the Waters of the United States Rule which protects from water pollution. Trump's plan calls for "an energy revolution" through supporting coal production, and fracking as well as maintaining fossil fuel production on public lands and increase onshore/offshore drilling for oil and gas. For Trump, this means a projected increase in GDP and jobs over the next four decades.

Johnson believes that the government must protect the environment from pollution. He believes that the Environmental Protection Agency should not be abolished because there needs to be a regulatory body. He also proposed a carbon fee to fix global warming which would be imposed on those who emit greenhouse gases. The fee would pay for the supposed cause of their actions.

On Fracking:

Trump, Clinton and Johnson all believe fracking is necessary, yet have different plans for its execution. For Clinton, fracking is about federal government regulation to better control excessive environmental harm, which will cause fracking to become highly restricted. Trump's position on fracking rests upon giving the power to states and local municipalities to develop their own programs and give voters the chance to determine its future. Johnson has said that he would keep an open mind to fracking, while increasing oversight on extraction.

On Occupational and Mine Safety:

Although the candidates have made few comments on the issue of occupational and mine safety, many experts believe Clinton will continue in the path of the Obama administration. This would mean keeping the

Presidential Candidates, cont.

same tough enforcement levels up and proposing budget increases such as Obama's proposal to increase the budget for the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA). This request is very likely to be opposed by Congress, which cut the Obama administration's similar Fiscal Year 2016 proposal. Clinton has also expressed her beliefs that there ought to be tougher penalties for MSHA or OSHA violations. This became especially important to her in the wake of the Massey Energy scandal, which sent Don Blankenship to jail for conspiracy to violate the MSHA. Clinton believes that violations of this nature should be punished with stronger criminal convictions and not be held as misdemeanor charges. This mindset shows that she will be in favor of strengthening worker safety.

In the wake of Trump's plans to slash funding in many government agencies, and potentially eliminate the Department of Education and the Environmental Protection Agency, many believe that OSHA and MSHA could follow suit and have their funding cut. For business owners this will also mean that a Trump OSHA would likely enforce and make fewer rules.

In the wake of Trump's plans to slash funding in many government agencies, and potentially eliminate the Department of Education and the Environmental Protection Agency, many believe that OSHA and MSHA could follow suit and have their funding cut. For business owners this will also mean that a Trump OSHA would likely enforce less rules and make fewer rules.

Johnson, the former governor of New Mexico, a state plan OSHA state, has not offered any opinions on the future of OSHA or MSHA should he be elected to the White House. For more information on the candidates, please contact our office.

OSHA Silica Standard: What Affected Organizations Need to Know and Do to Comply By: Michael L. Peelish, Esq.

Soon after OSHA issued its Silica Standard on March 25, 2016, the Precast/Prestressed Concrete Institute ("PCI") decided it would take a proactive approach for its members by providing an all-inclusive Silica training program.

In response to PCI's request for proposal, the firm was awarded a contract to prepare training materials including an Occupational Health Program and a Written Exposure Control Plan and to present this information at a 2-day training workshop for PCI member companies held in Nashville, Tennessee. Also, the firm was tasked with vetting numerous types of engineering controls/solutions and to obtain commitments from suppliers to attend the workshop and demonstrate their solutions. Over 275 persons were in

attendance at the two-day workshop from the PCI member companies. In order to complete the stated objectives, the firm embarked on a sampling program during June and July 2016 at numerous PCI member company plant and construction sites to obtain data and to observe work practices.

The Day 1 morning session involved an overview of the Silica standard presented by Adele Abrams, and a presentation by Howard M. Sandler, M.D. of Sandler Occupational Medicine Associates, Inc., on the health effects of Silica. The afternoon session provided three training workshops including (1) a presentation by a 3M representative and the firm's certified industrial hygienist (Wes Harkins) on respiratory protection and fit testing, (2) a presentation by two pump representatives (TSI and SKC) and the firm's certified industrial hygienist (Brian Yellin) on direct read and cyclone sampling devices and proper sampling methodologies, and (3) an explanation of the sampling data gathered from the PCI members' plant and construction sites and possible engineering controls/solutions presented by the firm through Michael Peelish and H. John Head, P.E. of Q4 Impact.

As part of the workshop, Day 2 involved 20 suppliers presenting engineering controls/solutions at a local PCI member precast facility. The suppliers covered the landscape of engineering controls/solutions from hand tools of all types, local and central vacuum systems, riding vacuum sweepers, clothes' cleaning booths, sampling devices, industrial hygiene services, abrasive blasting nozzles, and non-silica abrasive products to surface compounds. Because PCI provided generator power and water and the precast facility provided the concrete substrates, the attendees were able to observe actual demonstrations and the effectiveness of different types of engineering controls/solutions.

Armed with this information, the PCI member companies are beginning the process of developing their written exposure control plans. The member companies now have a better understanding of what it will take to comply with the Silica standard and the process they should pursue to optimize their efforts. It was abundantly clear that PCI members are serious about and focused on providing a safe and healthy work place for their employees.

The firm was honored to have been part of this proactive effort. The firm would like to thank all of the suppliers who attended and presented their engineering solutions and NIOSH for its assistance in providing literature on different types of engineering solutions.

Judge's Stay of Obama Executive Order, a Win for Employers

By: Jordan Posner, J.D. 2016

On October 24, 2016, a federal judge in the Eastern District of Texas, blocked a President Obama Executive Order known as the "Fair Pay and Safe Workplaces" rule. The challenge, brought by the Associated Builders and Contractors of Southeast Texas, puts a temporary hold on a requirement mandating businesses worth at least \$500,000 and bidding on government contracts, to disclose three years of state and federal labor law violations. The list of fourteen workplace laws which would have been subject to disclosure, include the Fair Labor Standards Act, Family Medical Leave Act, and Americans with Disabilities Act. This ruling is a sizeable victory for companies who now do not have to reveal records of misconduct or broken laws.

The Department of Labor released a statement saying "The Fair Pay and Safe Workplaces final rule and guidance promote contracting efficiency by ensuring compliance with basic labor standards during the performance of federal contracts, level the playing field so that contractors who comply with the law don't have to compete against those that don't, and promote responsible stewardship of taxpayer dollars. These actions are supported by extensive outreach and feedback from the contracting community and many others to ensure that they achieve these critical goals while minimizing burden on Federal contractors. We are confident that the rule and guidance are legally sound and the Department of Justice is considering options for next steps."

The order also prohibits employers from entering into mandatory pre-dispute arbitration agreements with employees and requires certain disclosures to independent contractors and employees concerning their employment status and information related to wages and hours worked. The judge's order did not include the 'paycheck transparency provision' which requires contractors with procurement contracts of \$500,000 or more to give employees their documents disclosing "the individual's hours worked, overtime hours, pay, and any additions made to or deductions made from pay." For more information, feel free to call the office.

Department of Transportation's New Rest-Break Exemption Goes into Effect

By: Jordan Posner, J.D. 2016

On November 1st 2016, the Federal Motor Carrier Safety Administration ("FMCSA") passed a rule, granting an exemption from the 30-minute daily, rest-break condition for commercial vehicle drivers. The exemption, which will expire November 1st 2018, applies to all qualifying motor carriers and drivers operating mobile cranes with a rated lifting capacity of greater than thirty tons. FMSCA believes this rule will maximize safety to levels greater than would be achieved without the exemption. This rule was issued based on the belief that drivers

have daytime hours with low-stress periods of wait time during the workday, operate at low speeds and spend limited hours of driving on public roads. Also, FMSCA believes their exemption will reduce the number cranes are parked on the shoulders of highways, causing risk of accidents. It is important to note that FMSCA's exemption does not apply to the 14-hour rest-break rule. This was done in order to contain fatigue which may occur from long working days.

All motor carriers and drivers must display their lift capacity, should it exceed the thirty-ton requirement. They must also have a copy of the exemption document in their possession while operating a vehicle under the conditions of the exemption. Motor carriers who operate under the exemption must have a "Satisfactory" or "Unrated" safety rating. For further information on this rule and to see if it applies to you, contact our office

States Consider Industry-Specific Safety Regulations for Marijuana Businesses

By: Joshua Schultz, Esq., MSP

Twenty-five states and the District of Columbia currently have laws legalizing marijuana in some form. Four states permit recreational use of marijuana, while California, Arizona, Nevada, Massachusetts and Maine will vote on legalization of recreational marijuana in the November election. This wave of legalization has created new industries and has legislatures considering the safety of the employees working in these trades.

California passed the Medical Cannabis Regulation and Safety Act in 2015, which went into effect on January 1, 2016. This law created a state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis. Further, the regulation requires the California Division of Occupational Safety and Health to convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations for marijuana businesses. The Division of Occupational Safety and Health convened their first advisory committee meeting on October 25, 2016.

California is not the only state to convene a committee to discuss safety-specific regulations for the marijuana industry. Oregon and Ohio have also convened committees, although the states have not promulgated workplace safety specific regulations for the marijuana industry.

Colorado businesses are subject to federal OSHA regulation; thus, the Colorado marijuana industry is subject these regulations. Businesses involved in the commercial cultivation, manufacture, retail sale,

SPEAKING SCHEDULE

ADELE ABRAMS

- November 9: ClearLaw webinar, Crystalline Silica
- November 16: SafePro Inc. Mine Safety Law Institute, Savannah, GA
- November 29: Northern Region Assn. of Safety Professionals, Fargo, ND, speak on OSHA Update, and Legal Liability Issues for ESH Professionals
- December 2: Chesapeake Region Safety Council, full-day seminar on crystalline silica, Baltimore MD
- December 13: Oregon independent Aggregates Assn./SafePro Inc., Albany, OR, speak on Mine Safety Legal Issues
- December 15: ClearLaw webinar, OSHA Injury/Illness Reporting Requirements

JOSHUA SCHULTZ

- November 6, 2016, California Construction and Industrial Materials Association Conference