

Workplace Safety and Health

Maintaining a safe and healthy workplace requires broad knowledge and experience in the wide range of laws that affect the workplace. Cozen O'Connor's Workplace Safety and Health practice consists of experienced attorneys in multiple offices across the country who are well versed in the regulatory, compliance, and enforcement issues that employers face when it comes to keeping employees safe. Our team boasts attorneys with an insider's perspective, including a former chairman of the Occupational Safety and Health Review Commission and a former OSHA prosecutor with the U.S. Department of Labor's Office of the Solicitor, giving us a unique understanding of how the government evaluates and prosecutes safety and health matters. We also have established relationships with Occupational Safety and Health Administration investigators and Area Directors responsible for workplace investigations. Further, we have established relationships with trusted safety and health experts across the country in numerous industries who are often critical in the defense of OSHA or OSHA State Plan matters. This background and experience can be critical to reaching a satisfactory resolution and avoiding costly fines and litigation.

While compliance with OSHA and OSHA State plans is an essential element of workplace safety and health, our lawyers regularly advise, draft policies and procedures, and litigate a myriad of other applicable laws. In terms of maintaining a safe workplace, this includes, for example, compliance with the Drug-Free Workplace Act; compliance with state laws governing the use of marijuana; drug and alcohol testing programs; determining when a person with a criminal background can be excluded from employment and under what circumstances; and helping to prevent and respond to violence in the workplace. In terms of maintaining a healthy workplace, this includes compliance with the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and similar state laws, and dealing with the interplay of laws and policies regarding employee health including the ADA/FMLA, worker's compensation, and short- and long-term disability policies.

Our attorneys have extensive litigation experience as well as unwavering focus on meeting clients' practical objectives. And as part of a full-service, Am Law 100 firm, our Workplace Safety and Health lawyers can seamlessly partner with attorneys in a range of practice areas — such as real estate, construction law, environmental law, and torts — to curate a single team to handle every aspect of a complicated safety and health matter.

We are a one-stop shop for the full spectrum of employers' needs relating to workplace safety and health issues. We have experience with a wide range of safety and health standards, including personal protective equipment, shoring, respiratory protection, fall protection, hazardous communication, lockout – tagout, machine guarding, electrical wiring, rail operations, toxic substances, and recordkeeping. Our in-depth experience cuts across many industries, including but not limited to construction, manufacturing, agriculture, retail, health care, warehouse, pharmaceutical, and transportation.

Our service offerings include the following:

- Helping employers navigate an OSHA (or State Plan) inspections and informal conferences.
- Assisting employers with full-scale internal safety and health audits or discrete safety and health audits focusing on specific issues in conjunction with safety and health experts.
- Drafting workplace safety and health policies and procedures.
- Drafting policies and procedures regarding the use of, and testing for, drugs and alcohol in the workplace.
- Overseeing root-cause investigations of workplace accidents.
- Analyzing claims that could be impacted by the ADA, FMLA, STD/LTD, worker's compensation, and



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Related Practice Areas

- Labor & Employment

employer leave policies.

- Contesting and litigating OSHA citations before the Occupational Safety and Health Review Commission, including those related to fatalities and amputations and willful and/or repeat classifications.
- Negotiating settlements, including the withdrawal and/or reclassification of repeat classifications, significant reductions of OSHA monetary penalties, and revisions to OSHA citations and/or settlement language to limit any potential liability on collateral issues such as wrongful death or negligence lawsuits.
- Defending against claims of retaliation brought under the more than 20 anti-retaliation statutes that OSHA enforces.
- Defending against claims and lawsuits brought under the ADA, FMLA, ERISA, and similar state laws.
- Assisting employers with responding to hazard alert letters/rapid response investigations to help ensure OSHA does not conduct a full scale inspection after receiving a complaint.

Additionally, we bring to the table the unique advantage of being able to seamlessly partner with professionals from The Healy+ Group, which is one of Cozen O'Connor's ancillary business units. The Healy+ Group specializes in organizational assessments, after-action reviews and special investigations, and expert consulting for civil litigation, among other services. The group serves a broad client base and often handles assessments that have a physical security and/or emergency management component.

We are thought leaders in the field who are frequently quoted in various publications on safety and health matters and are frequent panelists on safety and health webinars and panels. Additionally, our attorneys serve as editors for *Occupational Safety and Health Law, Fourth Edition*, published by the ABA and Bloomberg Law. We also publish a blog dedicated to workplace safety and health, OSHA Chronicle (www.oshacronicle.com), which examines OSHA's newest rules and the legal challenges they present. Our attorneys are also regular speakers at national safety and health conferences such as the AGC Construction Safety and Health Conference and EHS Today's Safety Leadership Conference.

Experience

Represented a staffing company in obtaining a Workplace Violence Restraining Order that protects its employees from violence, danger, or abuse at work.

Represented a hospital in obtaining a Workplace Violence Restraining Order that protected its employees from violence, danger, or abuse at work and secured dismissal of a counterclaim for civil harassment filed against the hospital's CEO.

Represented a real estate management company in an OSHA inspection involving an elevator fatality. After contest, multiple citations classified as serious were reduced to other-than-serious. Another item was withdrawn entirely and civil money penalties were significantly reduced.

Represented a national fast food franchisee in an OSHA fatality inspection that involved workplace violence. The inspection was closed without the issuance of any citation.

Secured dismissal, after a multiday virtual trial before the Office of Administrative Law Judges, of claims brought under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR 21"). The complainant alleged that he was fired in retaliation for reporting numerous safety violations of the Federal Aviation Regulations over which OSHA has jurisdiction. After OSHA issued a finding that it was unable to conclude there was reasonable cause to believe a violation occurred, the complainant requested a trial. After hearing the testimony of seven witnesses and reviewing post-trial briefs, the ALJ dismissed the complaint in its entirety with prejudice and denied all relief sought.

Successfully represented a manufacturer of nail polish strips in an investigation by the New Jersey Occupational Safety and Health Administration (NJ OSHA) that was launched after a worker was severely injured in the company's manufacturing plant while using heavy machinery. We persuaded NJ OSHA to not issue any citations or fines related to the accident.

Successfully defended a manufacturing company against a claim brought by a former employee under OSHA 11(c). The employee asserted that he was terminated in reprisal for notifying the employer of his and others' exposure to carcinogens at the worksite. After an extensive investigation, the Secretary of the U.S. Department of Labor dismissed the claim, having determined that, while the employee had engaged in protected activity, his protected activity was not the motivating factor in his termination.
