

OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with **Manesh Rath**



FINAL RULE ON WALKING-WORKING SURFACES AND FALL PROTECTION FOR GENERAL INDUSTRY

January 25, 2017

1001 G Street NW, Ste. 500 W,
Washington, D.C.



www.khlaw.com

Presented by:

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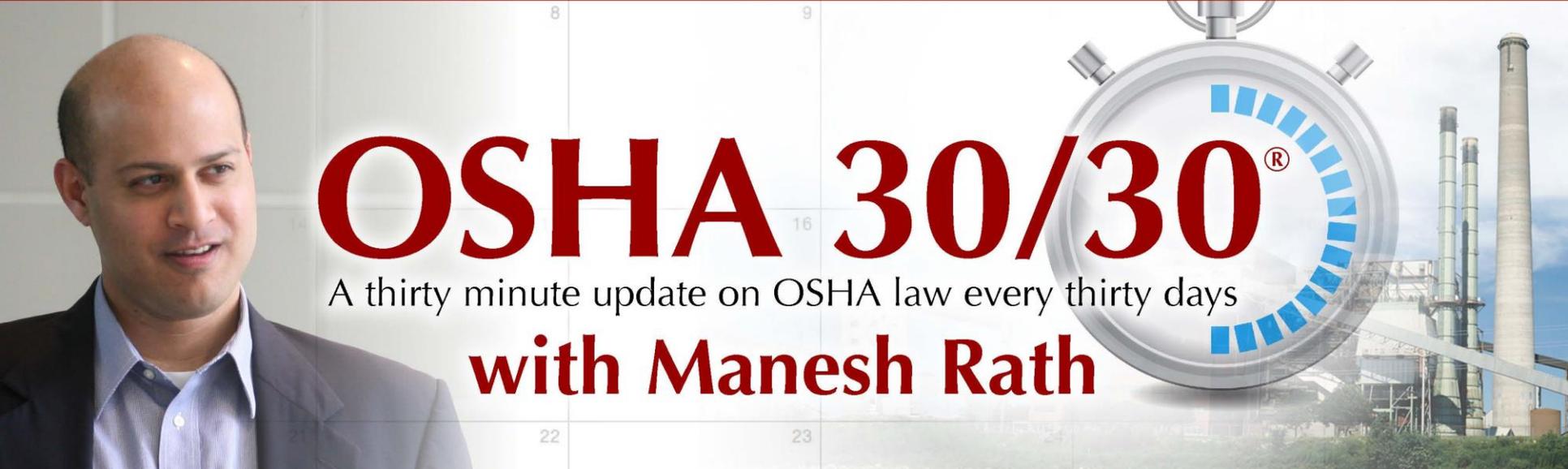
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LAWRENCE P. HALPRIN

Lawrence Halprin is a partner in Keller and Heckman's workplace safety and health, chemical regulation and litigation practice groups. He is nationally recognized for his work in workplace safety and chemical regulation. His workplace safety and health practice covers all aspects of legal advocacy, including: representing clients in OSHA and MSHA investigations and enforcement actions; providing compliance counseling and training; conducting incident investigations, compliance audits and program reviews; participation in federal (OSHA, MSHA and NIOSH) and state rulemakings and stakeholders processes; bringing and intervening in pre-enforcement challenges to final agency rules; advising on legislative reform and oversight; and participation in the development of national consensus standards under the ANSI process, and TLVs under the ACGIH process.

Mr. Halprin's engineering and financial background and extensive knowledge of OSHA rulemakings have greatly enhanced his ability to provide compliance counseling and represent clients in enforcement actions, and evaluate and critique rulemaking proposals and suggest alternative approaches. On behalf of one or more clients, Mr. Halprin has participated in almost every major OSHA rulemaking over the past 25 years as well as numerous Cal-OSHA rulemakings.



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MANESH K. 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 including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. On developing legal issues, he has been quoted or interviewed in *The Wall Street Journal*, Bloomberg, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," WAVY-TV and C-SPAN. He was listed in *Smart CEO Magazine's* Readers' Choice List of Legal Elite.

Mr. Rath has extensive experience representing industry in OSHA rulemakings. He has successfully represented employers—including some of the largest in the country—in OSHA citations and investigations before federal OSHA in regions across the country and in state plan states.

Mr. Rath currently serves on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years. He is the editor and co-author of the OSHA chapter of the *Employment and Labor Law Audit* (9th and 10th Editions) and a co-author of the book *Occupational Safety and Health Law Handbook* (2001).



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TOPICS TO BE DISCUSSED

- Who is covered under this rule?
- What hazards are covered by the rule?
- What is required by the rule?
- Delayed compliance deadlines and grandfathering
- Specific issues of concern, and
- What employers should do

WHO IS COVERED UNDER THIS RULE?

- All workplaces subject to General Indust. Standards
 - Not limited to walking-working surfaces
- Applies to any “walking-working surface” (WWS)
 - Reg text: Any horizontal or vertical surface on or through which an employee walks, works, or gains access to a work area or workplace location
 - Apparent scope: anything an employee steps on
- Effective January 17, 2017
- Inadequate provisions for delayed compliance
- Inadequate grandfathering of existing designs and equipment

WHAT HAZARDS ARE COVERED BY THE RULE?

- WWS surface hazards
 - Wet/slippery surfaces
 - Sharp or protruding objects
 - Loose boards
 - Corrosion
 - Leaks, spills
 - Snow and ice
 - Combustible dust (some controversy, GDC)
- Loads
- Access to WWS and Fall Protection (FP)
- *Regular* inspection, maintenance, guarding

WHAT IS REQUIRED BY THE RULE?

- All WWS: Inspection, repair, exclude until repaired
- Ladders
 - *Regular* Inspection, and tagging
 - Grasp with at least one hand *at all times*
 - May not carry an object that may cause loss of balance
 - Step across distance: changed to min of 7 in. for fixed ladders – no grandfathering
- Step bolts: inspect at start of each shift? (if used?)
- Stairways
 - Uniform riser height and tread depth; landings min. 30" deep
 - 6'8" of minimum vertical clearance (was 7')
 - Tread 22x9.5x9.5 in – prospective, eliminated complicated matrix (not applicable to stairs installed before Jan 17, 2017)

WHAT IS REQUIRED BY THE RULE?

- Dockboards
 - Runoff protective edge
 - Securing or anchoring dockboard
- Scaffolds
 - Must meet construction standards, but FP required at 4 ft



WHAT IS REQUIRED BY THE RULE?

- **Fall Protection and Falling Object Protection**
- **Exceptions:**
 - Portable ladders – where?
 - Performing an inspection, investigation, or assessment before or after performing work (vague, matches construction std.)
 - Powered platforms and aerial lifts
- **Fall protection for vertical drops of 4' or more**
- **Permitted means:**
 - Guardrail systems
 - Safety net systems
 - Personal Fall Protection systems: 3 types, fall arrest systems, travel restraint, and positioning systems



WHAT IS REQUIRED BY THE RULE?

■ Fixed Ladders

- If installed before 11/19/18: Personal fall arrest system, ladder safety system, cage or well
- If installed after 11/18/18: equipped with personal fall arrest system or ladder safety system
- By November 18, 2036, install or retrofit all ladders with personal fall arrest system or ladder safety systems
- Partial retrofits – must be done whenever any portion of a ladder, cage or well is replaced

WHAT IS REQUIRED BY THE RULE?

- Low Slope Roofs (4:12 rise over run) requirements:
 - 0 to < 6 ft from edge: guardrail, safety net, travel restraint system, or personal fall arrest
 - 6 to < 15 ft:
 - Same as 0 to < 6 , but if “Temporary and Infrequent” may use designated area
 - > 15 ft:
 - Same as 0 to < 6 or designated area, but if “Temporary and infrequent”
 - no fall protection requirement
 - Implement Work rule if don't use 0 to < 6 measure



DELAYED COMPLIANCE DEADLINES FOR TRAINING

- Training deadline *May 17, 2017*
 - Fall protection hazards
 - Fall protection equipment
 - But ... some FP exemptions tied to providing required training



SPECIFIC ISSUES OF CONCERN

- Requirements with uncertain compliance deadlines
- No grandfathering or delayed compliance to retrofit some existing equipment
- Broad and conflicting definition of walking-working surface
- Ambiguity on applicability of rule to rolling stock, motor vehicles and trailers



WHAT EMPLOYERS SHOULD DO

1. Training
2. Inspection and hazard assessment
 1. WWS
 2. FP systems
3. Be familiar with NFPA and OSHA guidance on acceptable accumulations of combustible dust
4. Records of training and inspections
5. Seek clarification of rule
6. Join litigation if perform residential roof work



**Please join us
at 1:00 PM Eastern U.S.
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Wednesday, February 22, 2017

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Thank you!

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