

OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with **Manesh Rath**

RECENT CRIMINAL PROSECUTIONS OF OSH ACT VIOLATIONS

June 19, 2019
1001 G Street NW, Ste. 500 W,
Washington, D.C.

KH[®] KELLER AND HECKMAN LLP
SERVING BUSINESS THROUGH LAW AND SCIENCE[®]

www.khlaw.com

Presented by:

David G. Sarvadi
Partner
sarvadi@khlaw.com

Javaneh Nekoomaram
Associate
nekoomaram@khlaw.com

Copyright © 2019



OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with Manesh Rath



Please Don't Forget to Dial-In:

Conferencing Number: (800) 768-2983

Access Code: 434 4318

(View the slides via webinar, and the sound via phone, above)

**An audio recording and slide deck will be provided post-webinar on
www.khlaw.com/osha3030**



www.khlaw.com

Copyright © 2019

DAVID G. SARVADI

Mr. Sarvadi practices in the areas of occupational health and safety, toxic substance management, pesticide regulation, and product safety.

Mr. Sarvadi represents clients before a variety of federal and state enforcement agencies in legal proceedings involving OSHA citations, EPA Notice of Violations, TSCA consent orders, CPSC Notices, FIFRA Stop Sale Use and Removal Orders, and EEOC Charges of Discrimination. He works with clients in developing, reviewing, and auditing compliance programs in all of these areas, and in obtaining agency rulings on proposed or novel activities and questions, seeking interpretations of regulations as they apply to specific sets of facts. He has been counsel to the National Coalition on Ergonomics from its inception.

He has a background in occupational safety and health, having worked as an industrial hygienist for more than 15 years and became a Certified Industrial Hygienist in 1978, a designation he held until he voluntarily relinquished it in 2010. Prior to becoming an attorney, he managed a corporate industrial hygiene program for a Fortune 500 company. Mr. Sarvadi was selected by the National Academy of Sciences to participate in a panel of the Institute of Medicine that was asked to review a NIOSH study on the use of respirators. He was asked to participate because of his expertise in law and industrial hygiene.



David Sarvadi

Partner

sarvadi@khlaw.com

202-434-4249

JAVANEH S. NEKOOMARAM

Javaneh Nekoomaram is an associate in the environmental and workplace safety and health (OSHA) practice groups at Keller and Heckman. Ms. Nekoomaram practices in all areas of environmental law as well as occupational health and safety law, and chemical control law. She routinely advises clients on a broad range of environmental health and safety compliance issues.

Prior to joining Keller and Heckman, Ms. Nekoomaram served for three years as Counsel for the American Coatings Association. She provided regulatory compliance and advocacy on a number of issues on behalf of the coatings industry including TSCA, Prop 65, hazard communication and labeling, state chemical regulation, hazardous waste, air and water quality, occupational health and safety, and chemical safety regulations. She also served as Advocacy Counsel for the Graffiti Resource Council, an organization supported by the aerosol coatings industry that provides anti-graffiti strategies for cities across the country.



Javaneh S. Nekoomaram
Associate
nekoomaram@khlaw.com
202-434-4176





OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with Manesh Rath

**View the entire library of prior
OSHA 30/30s here:**

www.khlaw.com/OSHA3030



TOPICS TO BE DISCUSSED

- OSH Act Criminal Violations
- Other Federal Criminal Violations
- State Criminal Violations
- Examples of Criminal Prosecutions (federal)
- Examples of Criminal Prosecutions (state level)
- What Employers Should Do

OSH ACT CRIMINAL VIOLATIONS

- OSH Act creates civil enforcement scheme
 - Monetary penalties
- Criminal penalties reserved for specific, egregious acts
- OSHA can make criminal referrals to:
 - DOJ
 - State prosecutors
- Challenges with federal prosecution
 - Resources
 - Competing priorities
 - OSH Act criminal violations are only misdemeanors

OSH ACT CRIMINAL VIOLATIONS

- Section 17(f) - advance notice of OSHA inspection
- Section 17(g) - false statements
- Section 17(e) - willful violations resulting in death
- Section 17(h)(2) - murder of an OSHA inspector



OTHER FEDERAL CRIMINAL VIOLATIONS

- 18 U.S.C. 1001 - false statements
 - Felony penalties for knowingly and willfully making false statements in any matter within the jurisdiction of the U.S. government (fine and up to 5 years imprisonment)
- 18 U.S.C. 1621 - perjury
 - Person who willfully subscribes as true any material matter which the person does not believe to be true under oath (fined and up to 5 years imprisonment)

STATE CRIMINAL PROSECUTIONS

- OSH Act does not preempt states from prosecuting under general criminal laws
 - *i.e.* Reckless endangerment, manslaughter, criminally negligent homicide, criminal conspiracy, assault
- Can be prosecuted under both OSH Act and state law



STATE CRIMINAL PROSECUTIONS

■ New York

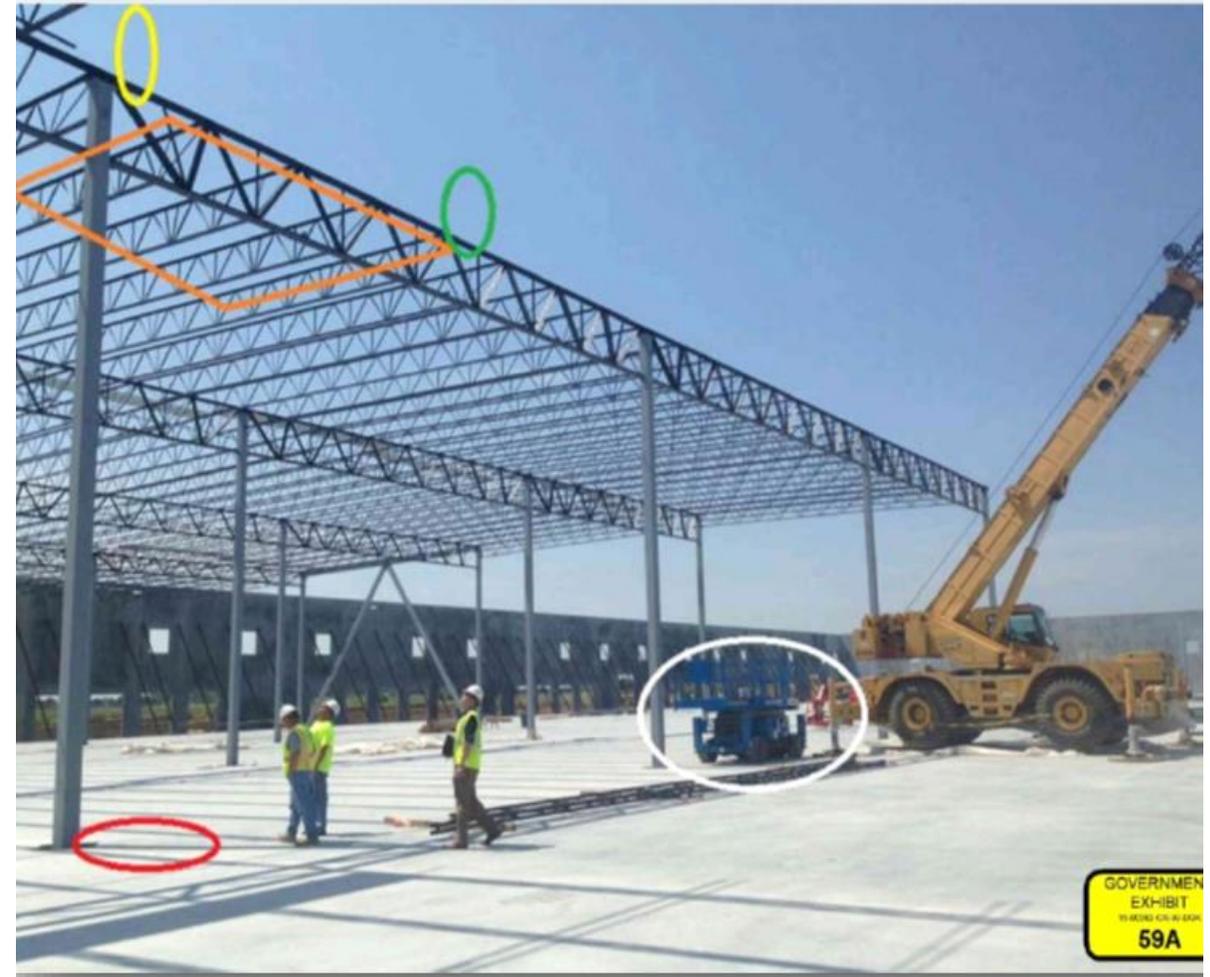
- Enforces general criminal laws in OSHA cases
 - Fernando Vanegaz case: owner charged with, among other charges:
 - second-degree manslaughter, criminally negligent homicide, second-degree reckless endangerment, third-degree assault

■ California

- Authorizes penalties for supervisors who have responsibility for the direction, management, control or custody of others;
- Where there is a willful violation of OSHA standard; and
- Results in death of employee
- First offense: 1 year jail time and up to \$100k fine

CRIMINAL PROSECUTIONS: FEDERAL

- Jan. 2017: *U.S. v. DNRB d/b/a Fastrack Erectors*
- Company found guilty of violating OSHA regulation causing death of employee
 - Did not comply with fall protection requirements
 - Evidence that supervisory personnel knew and were plainly indifferent to violations
- Sentenced: \$500k fine
- DNRB appealed to 8th Circuit
- 8th Circuit: affirmed



CRIMINAL PROSECUTIONS: FEDERAL

- OSHA certified safety trainer charged with falsifying OSHA documents
 - Sold more than 100 fraudulent OSHA 10 training cards
 - Submitted false training reports
- Feb. 2019: plead guilty
- OSHA: “Safety trainers caught falsifying information will be subject to criminal prosecution.”
- Sentencing scheduled for July 2nd

CRIMINAL PROSECUTIONS: FEDERAL

- *United States v. Riley*
- Owner and operator of RSR Construction charged for allegedly lying under oath in an OSHA investigation (perjury)
 - Allegedly told federal investigators that he never authorized workers to do roof repairs
 - Text messages showed he told workers to do the roof work that led to the falls

RECENT CRIMINAL PROSECUTIONS: STATE

- *Commonwealth v. Atlantic Drain Services (2017)*
 - Two employees killed when trench collapsed
- Company and owner both criminally charged for:
 - Manslaughter (2 counts)
 - Misleading investigator
 - Concealing a record (6 counts)
- Owner faces up to 20 years in prison for each manslaughter count

RECENT CRIMINAL PROSECUTIONS: STATE

- Dec. 13, 2018: Worker fell from 3-story apartment building and died
 - Did not wear fall protection equipment
 - Worker was a subcontractor of Purvis Home Improvement
- OSHA fined employer almost \$1.8 million
 - Willful, repeat, and serious violations
- Owner charged with both manslaughter and workplace manslaughter under Maine criminal statutes

WHAT EMPLOYERS SHOULD DO

- Following the death of an employee, employers should be aware:
 - OSHA inspectors may look for possible criminal violations (including duty to preserve record)
 - OSHA inspectors may look for possible Title 18 or other environmental violations
- Report fatality to OSHA within 8 hours
- Preserve all evidence surrounding fatality
- Consider legal counsel
- Defense in OSHA investigation affects criminal rights

MORE FROM THE OSHA 30/30:



Catch Manesh Rath on Twitter:
@RathManesh



Listen as a Podcast:

The OSHA 30/30 is now available as a Podcast!

Find it at:

- Khlaw.com/osha3030
- Or on any podcast streaming service (iTunes, Podcast Addict)

Connect with us on LinkedIn:



1. Manesh Rath, David Sarvadi, Larry Halprin, Javaneh Nekoomaram, and John Gustafson
2. Keller and Heckman Workplace Safety and Health



OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with Manesh Rath

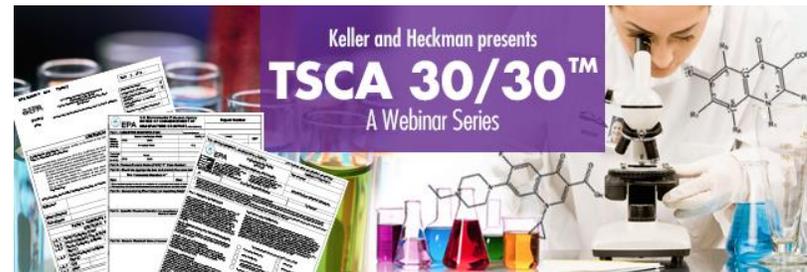
**Please join us
at 1:00 PM Eastern U.S.
July 17, 2019**

www.khlaw.com/OSHA3030





Please join us at 1:00 PM Eastern U.S.
Wednesday, July 17, 2019
www.khlaw.com/OSHA3030



Please join us at 1:00 PM Eastern U.S.
Wednesday, July 10, 2019
www.khlaw.com/TSCA-3030



Please join us at 1:35 PM Eastern U.S.
Wednesday, July 10, 2019
www.khlaw.com/REACH-3030



Next session to be scheduled
www.khlaw.com/FIFRA-3030



Thank you!

Please take a moment to fill out the survey on your screen.

Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001

(202) 434-4182
rath@khlaw.com



David G. Sarvadi
Partner
sarvadi@khlaw.com
202-434-4249



Javaneh Nekoomaram
Associate
nekoomaram@khlaw.com
202-434-4176

