



OSHA 30/30[®]

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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Judge Vacated an OSHA Citation Involving Fire Extinguisher Standard and Emergency Action Plans

September 25th, 2024

Manesh Rath

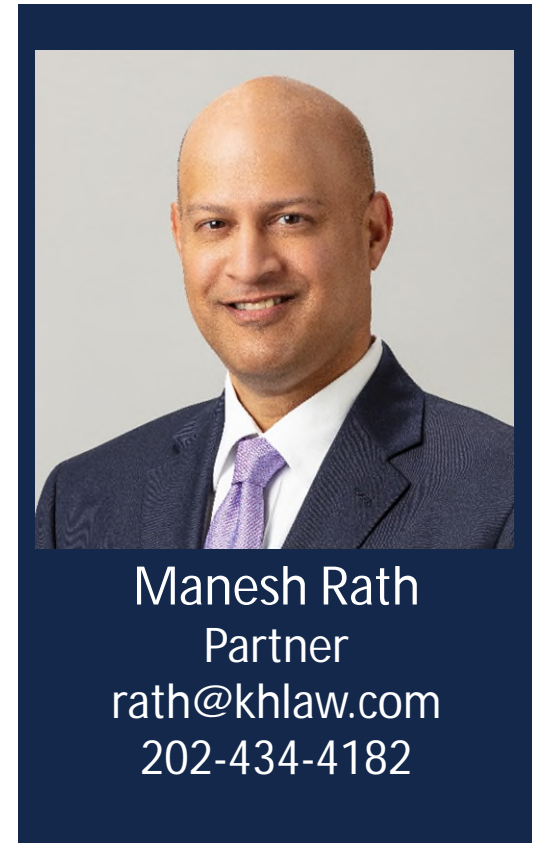


Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has testified before Congress on OSHA matters, and he has served as lead amicus counsel on several cases before the U.S. Supreme Court including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been quoted or interviewed in *The Wall Street Journal*, *Bloomberg*, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," and C-SPAN.

Mr. Rath served two terms 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 was voted by readers to Smart CEO Magazine's Readers' Choice List of Legal Elite; by fellow members to The Best Lawyers in America 2016 through 2024 (and in 2023, selected in his field 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.



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Taylor Johnson is an environmental lawyer specializing in the area of environmental regulation of products, including chemical control, pesticides, energy efficiency regulation, and importantly, domestic and international transportation of hazardous materials. Mr. Johnson also advises clients on community-right-to-know laws, Proposition 65, occupational safety and health matters, and supports a wide variety of commercial tort and other litigation issues.

Mr. Johnson has special expertise in the area of hazardous materials transport, including enforcement defense and compliance counseling. Mr. Johnson helps companies secure competent authority approvals, special permits, and letters of interpretation from regulatory authorities around the world. He has also prepared successful petitions to PHMSA on behalf of shippers seeking regulatory relief.

Prior to joining Keller and Heckman, Mr. Johnson promoted the development of energy and environmental legislation and policy at the state level.



Topics to Be Discussed

- ◆ Facts of *Secretary of Labor v. United States Postal Service*
- ◆ Establishing an alleged violation of an OSHA Standard
- ◆ OSHA's Argument
- ◆ United States Postal Services' Argument
- ◆ Administrative Law Judge's Decision
- ◆ What Employers Should Do

Factual Background

- ◆ In September 2021, rainfall from tropical storm Ida caused the roof of a USPS processing facility in Newark to collapse
 - ◇ Mail was rerouted to the Teterboro facility which doubled the number of packages stored and sorted there
 - ◇ Teterboro facility was not equipped to handle the larger packages
- ◆ An employee complained and OSHA inspected the Teterboro facility



Factual Background – OSHA’s Inspection



- ◆ OSHA cited USPS: A “gaylord” of mail obstructed a fire extinguisher
- ◆ OSHA cited USPS for two instances of repeat violations of the Portable Fire Extinguishers standard (29 CFR 1910.157(c))

Establishing a Violation of an OSHA Standard



- ◆ OSHA must prove by a preponderance of the evidence that:
 - ◆ The cited standard applies
 - ◆ There was a failure to comply with the standard
 - ◆ Employees were exposed to the violative condition
 - ◆ The employer knew, or could have known, of the violative condition with the exercise of reasonable diligence

OSHA's Argument:

- ◆ The Portable Fire Extinguishers standard (§1910.157(c)(1)) requires covered employers to:
 - ◆ Provide fire extinguishers and
 - ◆ Mount, locate, and identify, them
 - ◆ Must be readily accessible to employees
- ◆ OSHA alleged that USPS violated the standard by permitting a wall-mounted fire extinguisher to be blocked by boxes of mail
- ◆ OSHA alleged that boxes obscured employees' access to extinguishers



United States Postal Services' Argument

- ◆ Section of 1910.157(a) states that if “fire extinguishers are provided but are not intended for employee use and the employer has an emergency action plan (**EAP**) and a fire prevention plan (**FPP**)” then the standard does not apply
- ◆ The Teterboro facility’s EAP and FPP required employees to evacuate in the event of fire emergencies
 - ◆ The wall mounted fire extinguishers were not intended for employee use

◆ **OSHA’s Rebuttal:**

- ◆ Two employees at the facility were trained to use fire extinguishers during welding and grinding activities
- ◆ The facility’s EAP instructed employees who were trained in fire extinguisher use to put out well-controlled fires

Administrative Law Judge's Decision:



- ◆ OSHA's theory that the fire extinguishers at the facility were intended for employee use was found unpersuasive
- ◆ Testimony of facility manager clarified that the two employees were trained to use fire extinguishers only when they acted as a "fire watch" during welding and grinding activities, and in no other context
- ◆ Employees were trained to fully evacuate the building in the event of a fire emergency and directly instructed to not use the wall-mounted fire extinguishers to attempt to fight the fire
- ◆ Because the fire extinguishers were not intended for employee use, Section (c) of the standard was not applicable to USPS
- ◆ **Citations vacated**

What Employers Should Do

- ◆ Review Emergency Action Plan.
 - ◇ If EAP calls for employee use of fire extinguishers, then extinguishers must be accessible
- ◆ Conduct internal audits that review the following:
 - ◇ Emergency exits, fire extinguishers, fire extinguisher inspections, clear aisles, marked exit pathways
- ◆ Discipline instances of non-compliance
- ◆ Conduct employee training on EAP and exit routes
- ◆ Maintain thorough records for inspections, walk-throughs, and disciplinary activity



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Thank You

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