



OSHA 30/30[®]

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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Employer Failed to Satisfy Requirements for Properly Contesting OSHA Citation

December 11th, 2024

Manesh 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. He has been called to testify before Congress in several hearings relating to OSHA law.

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 interviewed in The Wall Street Journal, Bloomberg, Smart Money, Entrepreneur, on PBS's Nightly Business Report, and C-SPAN.

Mr. Rath served on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center and on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by fellow members to The Best Lawyers in America 2016-2025 (in 2024, was voted 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.



Benjamin Idzik



Benjamin (Ben) Idzik advises Keller and Heckman clients on regulatory compliance matters under state and federal environmental, occupational safety and health, transportation, and employment laws.

Specifically, Ben assists clients on issues arising under the Occupational Safety and Health (OSH) Act, Federal Motor Carrier Safety Administration (FMCSA) regulations, and U.S. Environmental Protection Agency (EPA) regulations, such as the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Prior to joining Keller and Heckman, Ben focused on regulations affecting trade associations and their members. While in law school, Ben served as a legal intern for an advanced nuclear reactor and fuel company and was the Note & Comment Editor for the Catholic University Law Review. He also completed a clerkship at the Montgomery County Circuit Court.



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Topics to Be Discussed

- ◆ Facts of the Case
 - ◇ *Secretary v. Bluewater Yachting Solutions, Inc.*
- ◆ Rules for Notice of Contest
- ◆ Employer's Arguments Excusing Delay
- ◆ ALJ's Finding
- ◆ NOCs Accepted After Deadline
- ◆ What Employers Should Do



Facts of the Case – The OSHA Inspection

- ◆ Inspection conducted Sept 26th, 2023
- ◆ OSHA issued citation Oct 18th, 2023
- ◆ Bluewater received the citation via certified mail Oct 23rd, 2023
- ◆ Bluewater contends that it mailed it on Nov 9th, 2023
- ◆ Thus, the NOC deadline would have been Nov 14th, 2023
- ◆ OSHRC received NOC on Mar 27th, 2024



Rule: Sufficiency of Service to Employer

- ◆ OSHA must show evidence of Notification of Citation
- ◆ Sent via Certified Mail
- ◆ Sufficient detail:
 - ◆ To inform employer of the nature of the allegation
 - ◆ To provide the opportunity to evaluate whether to contest the citation



Rule: Notice of Contest Deadline



- ◆ Fifteen working days from receipt of notification
- ◆ Working days excludes only Saturdays, Sundays, and federal holidays
- ◆ Delivered to the Area Director at the Area Office that issued the citation

Exception: FRCP 60 (b)



- ◆ Danger of prejudice
- ◆ Impact of delay, length of delay
- ◆ Reason for delay was out of Employer's control
- ◆ Whether the Employer acted in good faith

Bluewater's Argument

- ◆ Bluewater argued it mailed the contest of citation in a timely manner, on Nov 9th, 2023
- ◆ Bluewater did not date the notice of contest
- ◆ Bluewater used the incorrect address on the notice of contest



ALJ's Finding

- ◆ There was no prejudice to OSHA
- ◆ The delay would not impact the Commission's proceedings
- ◆ There was no evidence as to whether Bluewater acted in good faith
 - ◇ However, good faith alone would not be sufficient
- ◆ Lack of meritorious defense
 - ◇ Specifically, no evidence of excusable neglect
- ◆ Bluewater had control over the delay



NOCs Accepted After Deadline

- ◆ Late submissions have been accepted only in extraordinary circumstances
- ◆ Mailing issues – Citation Notice
 - ◆ Sent to incorrect employer address
 - ◆ Was not sent via certified mail
 - ◆ Was mailed more than six months after violation
- ◆ Miscommunication between employer and its attorney



What Employer's Should Do: Managing Contest Process

- ◆ Train staff on handling receipt of mail from enforcement agencies
- ◆ Immediately evaluate whether the citation items are correct
 - ◇ Are they defensible?
- ◆ Evaluate whether to contest
- ◆ Manage contest schedule independently
 - ◇ of informal conferences or telephonic, email, and resolution efforts



What Employers Should Do: In the Event of Missed Deadline

- ◆ Keep records of the facts supporting excusable neglect
 - ◇ (e.g., Medical records, uncontrollable absences, etc.)
- ◆ Keep record of certified mail of citation
- ◆ Record correspondences with compliance officer





Please join us at 10:00 a.m. Eastern U.S.
February 12th, 2025
www.khlaw.com/REACH-3030



Please join us at 1:00 p.m. Eastern U.S.
January 8th, 2025
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Thank You

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