



OSHA 30/30®

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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Judge Vacated Machine Guarding and Lockout Citations Against Food Producer

January 15th, 2025

Manesh Rath

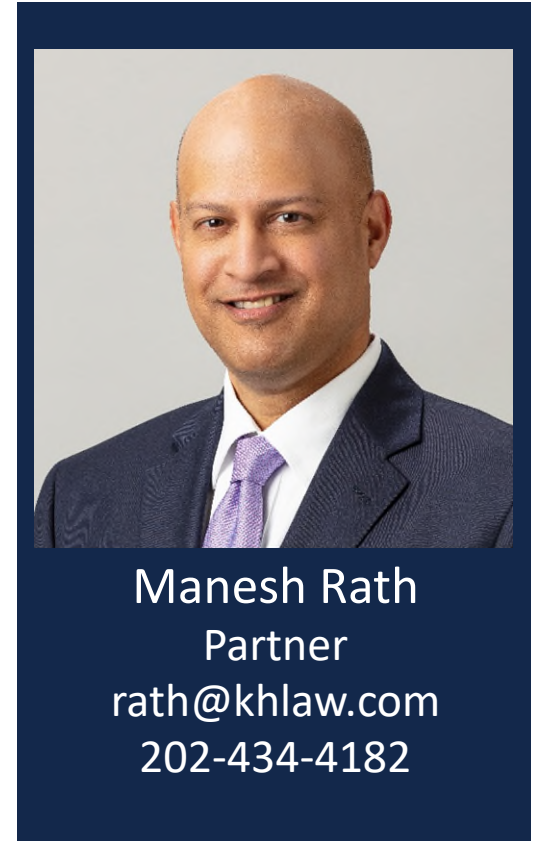


Manesh Rath is a partner in Keller and Heckman’s litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court. He has been called to testify before Congress in several hearings relating to OSHA law.

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.



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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
 - ◇ *Grimmway Enterprises v. Cal. OSHA*
- ◆ Machine Guarding Citation
- ◆ Lock Out / Tag Out Citation
- ◆ Independent Employee Action
Defense
- ◆ Cal. OSH Appeals Board's Decision
- ◆ What Employers Should Do



Facts of the Case

- ◆ Facility in Arvin, California houses a “roll sizer” machine that shakes carrots onto revolving rods that then send the carrots to a conveyor belt for further processing
- ◆ Two elevated working platforms adjoin two sides of the machine
 - ◇ Used by sanitation workers
- ◆ On May 26, 2017, sanitation employee Robert Salazar reached into the machine to clear a jam without de-energizing or locking it and was seriously injured



Citations Issued

- ◆ Machine Guarding (8-4002(a))
 - ◇ All machines and parts of machines that create hazardous movement must be guarded
- ◆ Lock Out / Tag Out (8-3314(c))
 - ◇ Moving machinery must be stopped and locked during cleaning, servicing, and adjusting
 - ◇ Warning signs / tags must be placed on power source
- ◆ Cal. OSHA must prove violation by a preponderance of the evidence

Machine Guarding Citation

- ◆ Cal. OSHA: The revolving rods in the roll sizer posed a rotating hazard that was not adequately guarded by Grimmway (evidenced by the accident)
- ◆ Grimmway: The revolving rods were a rotating hazard
- ◆ Rods were guarded by the frame of machine and their location relative to the work area



Lock Out / Tag Out Citation



- ◆ Cal. OSHA: Grimmway permitted Salazar to clean the roller sizer without locking and tagging
- ◆ Grimmway: The machine was neither locked nor tagged as required when the accident occurred
- ◆ Salazar was trained to lock and tag the machine during cleaning

Independent Employee Action Defense

1. Employee had experience in the job being performed;
2. Employer had a well-devised safety program and training;
3. Employer effectively enforced the safety program;
4. Employer had a policy of sanctioning employees who violate the safety program; and
5. Employee caused a safety infraction that he knew was contrary to the employer's safety requirements



Board of Appeals' Decision: Machine Guarding

- ◆ Burden of proof for affirmative defense
- ◆ The revolving rods were sufficiently guarded
 - ◇ housed within machine's frame
 - ◇ located far enough from the work area that did not pose a risk to employees stationed there
- ◆ Salazar was injured because he left his designated work area, lifted himself onto the machine's frame, and reached inside of the mechanisms



Board of Appeals' Decision: Lock Out / Tag Out

- ◆ IEAD applied
- ◆ Salazar was sufficiently experienced
- ◆ Grimmway trained Salazar on lock out / tag out procedures and kept training records
- ◆ On-floor supervisors present
- ◆ Grimmway maintained a written safety program that used progressive discipline for sanitation employees
- ◆ Salazar admitted that he knew reaching into the machine violated safety policy



What Employer's Should Do

- ◆ Provide training to employees on job duties that involve a safety hazards and document employees' completion of training
- ◆ Maintain a written safety program and develop machine-specific lockout protocols
- ◆ Discipline employees based on set standards even in cases of accidents and injuries
- ◆ Ensure that supervisors monitor for compliance with workplace safety rules





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.
February 12th, 2025
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Thank You

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