



OSHA 30/30[®]

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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Judge Vacated OSHA Citation After Finding Employer's Safety Program Sufficient

February 19th, 2025

Manesh Rath

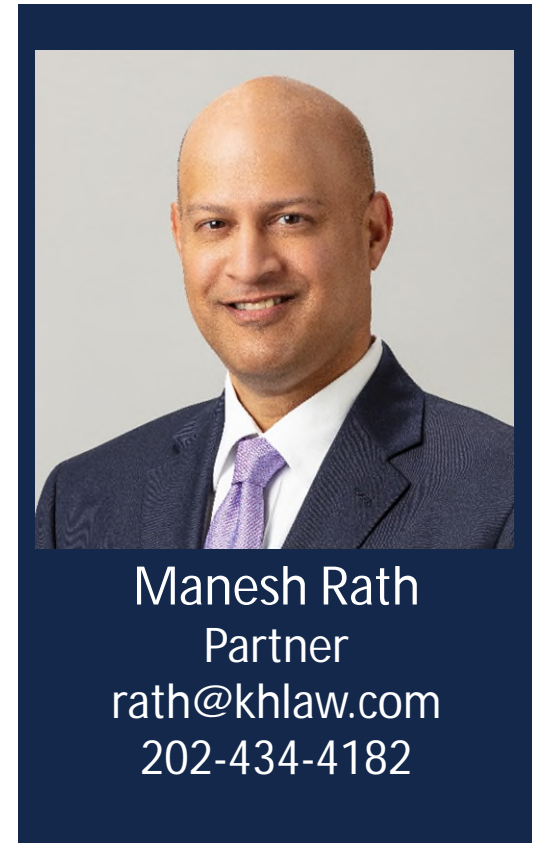


Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court. He has been called to testify before Congress in several hearings relating to OSHA law.

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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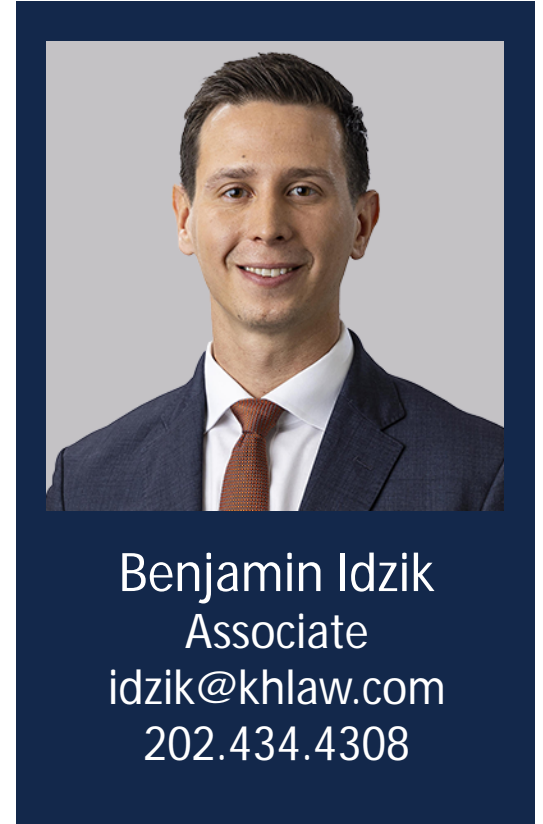
Benjamin Idzik



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 *Secretary of Labor v. Avadek, Inc.*
- ◆ Citation Issued
- ◆ Establishing an OSHA Citation
- ◆ OSHA's Argument
- ◆ Avadek's Argument
- ◆ ALJ's Decision
- ◆ What Employer's Should Do

Facts of *Sec'y. of Labor v. Avadek, Inc.*

- ◆ Avadek was hired to install an aluminum canopy in a Bryan, TX park
- ◆ After the initial build, a manager and foreman discussed improvements
- ◆ The manager approved use of an aerial lift
- ◆ Both conducted a walkaround inspection
- ◆ The next day, the foreman fell from the canopy while working and died
- ◆ On April 4th, 2023, OSHA issued a citation
- ◆ Alleged violation of fall protection standard
- ◆ Alleged violation of Accident Prevention Requirement



Citation Issued

- ◆ Serious Violation of 29 CFR 120.20(b)(2)
- ◆ An employer must initiate and maintain a safety program of “frequent and regular inspections” of “job sites, materials, and equipment,” which should be conducted by a competent person designated by the employer



Establishing an OSHA Citation

- ◆ OSHA must prove, by a preponderance of evidence, that:

1) The standard applies to the cited condition;

2) The terms of the standard were violated;

3) One or more of the employees had access to the cited condition; and

4) The employer knew, or with the exercise of reasonable diligence could have known, of the violative condition

OSHA's Argument

- ◆ Avadek allegedly failed to inspect the worksite the day of the accident
- ◆ Safety program was allegedly deficient because it did not require inspections to be documented
 - ◇ Daily “job hazard analyses” (JHAs) required by the general contractor
- ◆ The foreman allegedly was not a “competent person” because he only reported issues to the manager



Avadek's Argument

- ◆ The manager and foreman conducted a walkaround inspection, the day prior to the accident as required by company policy
- ◆ OSHA conflated JHAs and “inspections” under the fall protection standard
- ◆ The foreman had the authority to take corrective action to eliminate hazards on the worksite
- ◆ Foreman’s manager spotted and corrected aerial deficiency



ALJ's Decision

- ◆ Avadek conducted a walkaround on the day prior to the incident
 - ◆ Consistent with its written safety program that inspections take place “before each assigned job” and “whenever conditions change”
- ◆ The fall protection standard does not require documentation of every inspection



ALJ's Decision (2)

- ◆ The foreman met the definition of “competent person” under the standard
- ◆ OSHA did not have affirmative evidence of a violation
- ◆ The citation was vacated



What Employers Should Do

- ◆ Maintain, and update written safety policies
- ◆ Perform job hazard analysis
- ◆ Train employees on policies and job hazards
- ◆ Monitor for internal compliance – frequent and regular inspections of job sites, materials, and equipment
- ◆ Discipline, and record, deficiencies
- ◆ Train onsite supervisors to capably conduct onsite inspections
- ◆ Provide onsite supervisors with the authority to take corrective action





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at 1:00 p.m., Eastern Time

March 19th, 2025

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Thank You

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