

# PUBLICATION

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## OSHA Begins Targeted Audits and Proposes New Labeling Laws

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The Occupational Safety and Health Administration (OSHA) has recently implemented a new program to audit workplace recordkeeping and proposed new chemical labeling regulations. Both undertakings seek to target a wide swath of industries throughout the country.

### NATIONAL EMPHASIS PROGRAM (NEP)

Effective September 30, 2009, OSHA began implementing the National Emphasis Program (NEP), designed to audit injury and illness record keeping practices within certain industries. OSHA officials have long opined that certain industries have consistently under-recorded such incidents these workplace incidents. Accordingly, industries that typically should have higher rates of reportable incidents because of the nature of the business, but generally have a low rate of reporting, are now under scrutiny.

These industries include: nursing care facilities, soft drink and concrete pipe manufacturing, poultry processing, animal slaughtering, steel foundries, pet and pet supplies stores, and seafood canning. The NEP is expected to set its sights on employers with 40 or more employees in industries that have a DART (days away, restrictions and transfers – based on the 200,000 hour benchmark) rate of 5.7 to 8.1. Employers in these industries who have reported a DART rate between 0.0 and 4.2 during 2007 are expected to be targeted in the first round of audits.

During audits, OSHA compliance officers have been instructed to review not only employers' OSHA Forms 300, 301 and 301A, but also medical records, workers' compensation records, insurance records, payroll/absentee records, and, if available, company safety incident reports, company first-aid logs, alternate duty rosters, and disciplinary records pertaining to injuries and illnesses.

Public sector employers, establishments participating in a strategic partnership with OSHA, and OSHA-approved Voluntary Protection Program (VPP) or Safety and Health Achievement Recognition Program (SHARP) workplaces will not be inspected under the NEP.

### HAZARD COMMUNICATION STANDARD (HCS)

OSHA has also recently announced a proposal to align the hazard communication standard (HCS) with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Currently, chemical manufacturers and importers are tasked with evaluating the hazards of chemicals produced and imported, and with providing this information to users of these materials. Typically, a communication would include container labels, safety data sheets and employee training, with no set format in how this information is communicated. By contrast, under GHS, labels *must* include signal words, pictograms and hazard and precautionary statements.

If this proposal is adopted, changes will also be made to the manner in which chemicals are determined to be either hazardous or non-hazardous. Under the proposed rules, manufacturers would be required to classify all health and/or physical hazards of a chemical. Moreover, OSHA has proposed a standard format for Safety Data Sheets, or Material Safety Data Sheets. Because OSHA believes that these data sheets are currently too

complex and confusing, it seeks a standardized format for such information. Of course, to implement such changes, employers will have to train employees on these new requirements. Because these changes can have significant monetary impact on employers, employers are encouraged to thoroughly review this proposal and submit written comments on or before December 29, 2009.

Baker Donelson stands ready to assist you with these and other labor and employment-related challenges. Contact any one of our nearly 70 Labor & Employment attorneys located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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