



## OSHA Expands Its Enforcement Activity (Again)

by Lynn V. Luther and Thomas J. Gibney

OSHA always has promulgated rules and safety initiatives to promote workplace safety, but in this era of increased regulatory enforcement, OSHA is expanding its reach to several areas that employers have historically believed were beyond its control.

In late 2011, OSHA announced that it would consider issuing citations when employees are driving a motor vehicle while distracted by talking, texting or otherwise using their cell phones. Because there is no regulation which covers this situation, OSHA has indicated it may cite employers under the general duty clause, which requires employers to provide a workplace free of recognized hazards. Although OSHA has indicated that it is focusing on eliminating texting while driving, it is possible that any type of cell phone use while driving could result in an OSHA citation.

Because employers cannot monitor their employees' every move, especially while on the road, employers should have a policy prohibiting employees from texting or otherwise engaging in distracted driving while operating a motor vehicle. The policy should be enforced uniformly, as far as practicable, and any discipline issued pursuant to that policy should be well documented.

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*About the photo:* Picture of the Ohio Statehouse

OSHA also announced a new initiative to prevent workplace violence. Through the initiative, OSHA encourages employers to establish a written zero-tolerance policy toward workplace violence. OSHA indicates that the policy should apply to all workers, patients, clients, visitors, contractors and anyone else who may come in contact with company personnel. OSHA also indicated that employers should assess their workplace to determine if anything can be done to reduce the likelihood of workplace violence, and to insure that employees are trained on how to handle workplace violence if it should occur. Through the initiative, OSHA states that it is focused on "high risk" industries, which it describes as late night retail establishments, social service agencies and medical facilities. There is no guarantee, however, that OSHA will not expand this initiative to all employers.

Given the increased enforcement activity of OSHA in recent years, it is imperative that employers update their policies to insure compliance with these and other OSHA initiatives, and to conduct any necessary employee training before OSHA arrives for an inspection.



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