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CLIENT ALERT – OSHA'S REVISED INSPECTION PLAN

Dear Client:

Recently, the Occupational Safety and Health Administration ("OSHA") announced its 2009 Site-Specific Targeting Inspection Plan. This replaces its 2008 plan and pertains to work sites other than construction.

The Inspection Plan selects establishments for primary and secondary inspections. Selection is based on DART (Days Away, Restricted or Transferred) rate and DAFWII (Days Away from Work Injury and Illness) case rate. Primary and secondary inspection lists are developed for manufacturing, non-manufacturing and nursing homes and personal care facilities. For the first time in 2009, nursing homes were added to the secondary inspection list.

The primary inspection list consists of manufacturing establishments with a DART rate at or above 8.0 or a DAFWII case rate at or above 6.0. OSHA estimates this to cover approximately 3,100 sites. For non-manufacturing, the DART rate for primary inspection is 15.5 or above or a DAFWII case rate at or above 13.0. This will result in primary inspection of approximately 500 sites. **For nursing and personal care facilities, the primary inspection DART rate is 17.0 or above and the DAFWII case rate is 14.0 or above. OSHA estimates this to cover approximately 300 sites.** If an area office completes the inspections of all establishments on the primary inspection list before the expiration of OSHA's program (July 20, 2010), additional establishments from a secondary inspection list with lower DART rates or DAFWII case rates will be selected.

For personal care and nursing homes, inspections will focus specifically on ergonomic stressors, exposure to blood and other potentially infectious materials, exposure to tuberculosis and slips, trips and falls. In addition to the focus of inspections, organizations should also be aware of OSHA's new instructions regarding the walk-around portion of the inspection.

As part of an OSHA site inspection, the compliance officer will request to review OSHA records maintained by the employer. The regulations provide that an employer has four business hours to produce those records. In its Inspection Plan, OSHA has made it clear that although the employer has four hours to provide recordkeeping records there is no requirement that the compliance officers must wait this period of time before beginning the walk-around portion of the inspection. In fact, OSHA has instructed that as soon as the opening conference is completed, the compliance officer should begin the walk-around portion of his or her inspection.

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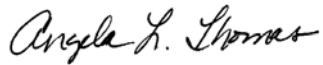
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With this latest instruction, it is now more critical than ever that employers develop a protocol to deal with the prospect of an inspection, especially the walk-around portion of the inspection; observations during a walk-around are fair game for citations. An employer should make sure that it understands its rights during this portion of the inspection and has personnel prepared to assert those rights and follow well-developed protocols. These will help in the event of subsequent litigation.

If you require any assistance regarding preparing for an OSHA inspection or with any other employment law issues, please do not hesitate to contact us.

Sincerely,



Angela L. Thomas



Glenn R. Davis