

## OSHA – Regulatory And Enforcement Update

February 11, 2013 | [Employment Discrimination, Currents - Employment Law](#)



**Mark S. Kittaka**  
Partner

### Danger Construction

With four more years of the Obama administration, expect increased enforcement efforts from OSHA as we have seen in the past four years. As noted [last year](#), even without formal statutory reform, OSHA managed to double the average fines given to employers through an internal administrative penalty bulletin and the Severe Violator Enforcement Program (SVEP). The outlook for 2013 appears to be more of the same.

The scope of enforcement activities of OSHA may expand as well with the creation of the Whistleblower Protection Advisory Committee (WPAC). The WPAC was created to advise the Secretary of Labor on ways to improve the fairness, efficiency, and transparency of OSHA's whistleblower investigations. This may lead to the expansion of various whistleblower inspections.

On the regulatory front, OSHA issued its [semiannual regulatory agenda](#) in December. There are a number of significant rules to be considered in 2013 including:

1. Formal review of OSHA's chemical permissible exposure limits;
2. Notice of Proposed Rulemaking to improve tracking of work-related injuries and illnesses (May 2013);
3. The Injury and Illness Protection Program (I2P2) has been described by Assistant Secretary Michaels as a priority on the agenda. The I2P2 would require all employers to establish a comprehensive health and safety program to address all hazards in the workplace;
4. Combustible Dust will be subject to a small business review in October. Until this specific standard is created, employers will still be subject to the National Enforcement Program to address the hazards of combustible dust. Currently, employers are cited for violations of the general duty clause as well as for housekeeping and safe electrical practice standards.

Given the potential expansion of OSHA regulations, as well as the increased inspections and enforcement activity, employers need to be more proactive than ever. Six and seven figure fines have become commonplace. Fines of this size simply cannot be ignored. Employers should review safety policies to confirm compliance with current regulations and then conduct internal audits to determine whether its employees are complying with those policies on the production floor.

### RELATED PRACTICE AREAS

Arbitration and Grievances  
EEO Compliance  
Labor and Employment  
Workplace Culture 2.0

### RELATED TOPICS

Obama  
OSHA  
Whistleblower Protection Advisory Committee