



Workplace Safety and Catastrophe Management Practice Group



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The Fisher & Phillips LLP Workplace Safety and Catastrophe Management Practice Group

provides strategic assistance to employers in all areas of employee safety and health. The firm has one of the top workplace safety and health practices in the nation, which has more expertise and experience in the occupational safety and health area than virtually any other law firm. The practice group's leaders, Edwin G. Foulke, Jr. and Howard A. Mavity, together have nearly 60 years of experience in the workplace safety and health field.

Mr. Foulke is the only individual in the country who has been both the Assistant Secretary of Labor for Occupational Safety and Health and the Chairman of the Occupational Safety and Health Review Commission. In 2008, he was named one of the "50 Most Influential Environment, Health and Safety Leaders" in the United States by *Occupational Hazards* magazine. Mr. Mavity has handled more OSHA fatality investigations than virtually any other attorney in the country, and he has developed a group of attorneys known for providing practical solutions to workplace safety and health challenges. Mr. Foulke and Mr. Mavity, along with the 20-plus attorneys who actively practice in the safety and health area, represent one of the largest workplace occupational safety and health law practices in the country.



Edwin G. Foulke, Jr. is Co-Chair of the Workplace Safety and Catastrophe Management Practice Group. Prior to joining Fisher & Phillips, he was the Assistant Secretary of Labor for Occupational Safety and Health. Named by President George W. Bush to head OSHA, he served from April 2006 to November 2008. During his tenure at OSHA, workplace injuries, illnesses and fatalities rates dropped to their lowest level in recorded history. For approximately thirty years, Ed has focused his practice on occupational safety and health issues, workplace violence risk assessment and prevention, whistleblower protection, and accident and fatality prevention. He also served on the Occupational Safety and Health Review Commission in Washington, DC, and he chaired the Commission from 1990 to 1994.



Howard A. Mavity is Co-Chair of the Workplace Safety and Catastrophe Management Practice Group. He draws upon his past business experience in transportation, logistics, construction, and industrial supply to work with clients as a business partner. In his 25 years with the firm, Howard has managed more than 320 OSHA fatality cases in construction and general industry, ranging from dust explosions to building collapses. He has coordinated complex inspections involving multi-employer sites, corporate-wide compliance, and issues involving alleged criminal law violations. He also lectures and conducts training for numerous private and governmental employers.

The Importance of Workplace Safety and Health: Except for the self-employed and a small number of specific industries, the Occupational Safety and Health Act of 1970 covers all employers having at least one employee. As Congress and the Obama Administration move forward to expand the Act and its enforcement, the Occupational Safety and Health Administration (OSHA) will impact an ever increasing number of employers with greater penalties and fines as well as more regulations. In addition, as economic pressures continue to bear on U.S. businesses, employers will continue to look for cost reductions to allow them to be more profitable and more competitive in the marketplace. Improvements in workplace safety and health can produce marked reductions in workers' compensation and health care costs. Moreover, an employer's commitment to workplace safety powerfully demonstrates its concern for its employees' welfare, often increasing employee loyalty and morale. A safer and healthier workplace typically results in a more profitable and competitive enterprise.

We Offer A Wide Range of Services to Employers, covering every aspect of workplace health and safety:

Prevention, Compliance and Training

Fisher & Phillips assists employers with the overall development and legal review of safety and health management programs, with a special focus on self-audits and inspections, training, record-keeping, integration of safety programs with other employment policies and procedures, and efforts to minimize the likelihood of related civil liability as well as repeat and willful citations. We can assist in structuring or managing self-audits to ensure compliance is occurring and, where appropriate, provide protection from discovery for such vital self-critical analysis as part of our provision of legal advice. Our attorneys utilize industry-specific experience to tailor a preventive approach that meets your business needs. Where compliance with a particular standard is not feasible, we can provide assistance in seeking a variance to the standard. In addition, we can conduct the necessary training of your key personnel to meet the requirements of the Act and OSHA regulations.

Catastrophe Management and Response

The Workplace Safety and Catastrophe Management Practice Group provides legal advice and crisis management assistance in the investigation and resolution of catastrophic accidents and fatalities occurring in the workplace. Our attorneys understand the confusion that often surrounds a sudden and serious workplace accident, and we can assist in coordinating the fast response that is required to effectively manage the situation. Managing a catastrophe involves not only handling of sophisticated legal issues, but also media relations, dealing with the families of the deceased or injured employees, preparing for possible civil or criminal proceedings, and working with insurers, regulators, experts, and other involved parties.

A photograph of a construction site. In the foreground, a large, rough-textured log is being processed by a machine. In the background, there is a green building with a white railing. A white sign with red and black text is attached to a chain-link fence in the foreground.

DANGER
HARD HATS
AND
SAFETY BOOTS
MUST BE WORN
ON THIS SITE

Imminent Danger Response

When OSHA determines that an “imminent danger” exists at a client’s workplace and attempts to shut down part or all of a facility, Fisher & Phillips can provide the immediate legal assistance needed to petition a federal or state court for a temporary restraining order or preliminary and permanent injunction. We also can provide guidance on how to deal with such issues and avoid the posting of an “imminent danger” notice.

Representation in OSHA, MSHA and CSB Inspections

When your business is subjected to an inspection by OSHA, the Mine Safety and Health Administration (MSHA), the Chemical Safety Board (CSB), or a similar state agency, Fisher & Phillips can provide the necessary representation to protect your legal interests. We provide legal advice and on-site guidance to ensure that an inspection by OSHA or MSHA complies fully with the law, that the scope of the inspection is as limited as possible and that your rights are fully protected. When citations are issued, our attorneys help evaluate your position and minimize your exposure to penalties and fines. We have broad experience in handling cases involving repeat or willful citations, corporate-wide investigations, whistleblower actions, construction and multi-employer settings, OSHA “Significant Cases” (cases involving more than \$100,000 in fines), so-called “egregious cases” (instance by instance citations), “Enhanced Enforcement Program” (EEP) cases, as well as catastrophic, multiple injury and high visibility cases such as explosions, crane collapses, and employee death cases. Whether negotiating a settlement at an OSHA informal conference, or defending you in litigation before the Occupational Safety & Health Review Commission, our attorneys use their knowledge and experience to vigorously defend employers. We also coordinate with other counsel to provide OSHA and labor and employment advice in the context of criminal proceedings, construction disputes, and the civil litigation often resulting from workplace catastrophes. As in all areas of our labor and employment practice, we have developed cost effective strategies to manage large cases, as well as to provide guidance for smaller citations, often working with safety consultants and experts. Abatement and correction issues may arise after the issuance of safety citations, regardless of whether the citations are contested, and our attorneys provide assistance with ongoing OSHA abatement issues.



Settlements, Litigation and Appeals

Where OSHA or a similar agency has completed its inspection of the worksite and issued citations, it may be advantageous for an employer to enter into settlement negotiations. Fisher & Phillips attorneys have extensive experience in negotiating settlements with OSHA at the national, regional and state level. We treat government agents in a professional fashion and we seek to build positive working relationships between government agencies and our clients. Workplace safety provides unique opportunities to focus on the shared goal of protecting employees. Where settlement is not possible, we have the expertise to contest citations before the Occupational Safety and Health Review Commission, the Mine Safety and Health Review Commission, and all state safety and health commissions, boards and courts. In addition, we handle appeals of alleged safety and health violations through all state and federal appeals courts.

Criminal Litigation

The primary goal of every employer should be zero workplace fatalities. However, when a fatality occurs on a worksite, there is an ever-increasing likelihood that a state or federal criminal investigation may occur. Fisher & Phillips can provide you with the legal advice and assistance necessary to avoid allegations of obstruction, false statements, or other misconduct. We offer advice to avoid criminal investigations or referrals and, where such actions are filed, we coordinate with corporate and individual criminal defense counsel in providing the most rigorous defense possible.

Associated Civil Actions and Related Labor Issues

In many cases, an OSHA inspection and subsequent citations will also lead to other civil litigation and potentially to other labor, employment law and tort claims. In addition, compliance with certain OSHA standards can result in an employer being in violation of other federal or state labor laws. Safety and health issues also may play prominently in union organizing and in contract negotiations. Because of the firm's expertise and experience in labor and employment law, our attorneys are able to provide the legal advice necessary to minimize such conflicts and potential liability.

Workplace Violence: Risk Assessment, Prevention and Training

Workplace violence is a growing problem facing all employers. Because of the complex legal and personnel issues associated with this problem, Fisher & Phillips has developed a number of options and strategies to deal with violence in the workplace. These options include facility and personnel risk assessment, supervisory and management training, as well as policy and procedure analysis. In those cases where it is necessary, we are able to obtain temporary restraining orders and injunctions as well as assist in securing criminal prosecution of offenders.



Retaliation, Discrimination and Whistleblower Complaints

OSHA oversees and investigates 17 retaliation, discrimination and whistleblower statutes and regulations. Having handled numerous employee whistleblower complaints, Fisher & Phillips is able to assist in the defense of these complaints from the investigation phase through any court actions. Addressing these complaints quickly is important not only from financial and employee relations perspectives, but also because some whistleblower statutes provide employees with reinstatement rights.

OSHA Standard Rulemaking and Legislation

Each year, federal OSHA and all of the state-designated OSHA plans promulgate new health and safety standards through rulemaking and legislation. Fisher & Phillips represents employers and industry associations in preparing for the effects of new legislation or regulatory standards, as well as assisting with comments and advocacy in rulemaking proceedings. We provide legal assistance and guidance for employers who wish to have their concerns articulated as well as to demonstrate the practical problems presented by many of these proposed standards. Our attorneys have testified before Congressional committees on safety and health legislation on numerous occasions. We can assist employers in developing testimony for both Congressional and OSHA hearings and we can also handle pre-enforcement court challenges to legislation and OSHA/MSHA standards.

Homeland Security/Emergency Preparedness

Both the growing threat of terrorism and the number and severity of natural disasters present the need for every employer to prepare to respond to such events. Fisher & Phillips provides assistance and advice in the development of comprehensive emergency response plans that will help a company to respond to and continue to operate if and when a natural or man-made disaster strikes. These emergency response plans cover such disasters as fires, hurricanes, tornados, earthquakes, floods, pandemic flu, anthrax attacks, and terrorist attacks.

Due-Diligence Review for Corporate Mergers and Acquisitions

Fisher & Phillips can provide an evaluation of workplace safety and health liability exposure and compliance as part of the due diligence review for any corporate merger, acquisition or similar transaction. Safety and health violations and the resulting OSHA penalties can lead to hundreds of thousands of dollars in fines which can have a substantial impact on the true value of a company.



Ergonomics

Musculo-skeletal disorders constitute the greater number of injuries identified by OSHA. OSHA has been citing employers for ergonomic injuries under the General Duty Clause, but it is anticipated that an ergonomics standard may become law in the near future. Fisher & Phillips is available to assist in the development of an ergonomics action plan to address the prevention of ergonomic injuries and to avoid potential OSHA citations.

Workers' Compensation

One of the major non-production costs for most employers is workers' compensation. Fisher & Phillips is ready to work with your workers' compensation provider or risk manager to develop an effective safety and health management system to reduce and possibly eliminate workplace injuries, illnesses and fatalities.

Cooperative Programs

Fisher & Phillips attorneys have worked closely with OSHA with respect to its cooperative programs, including partnerships, alliances, SHARP and the Voluntary Protection Program (VPP). We have assisted our clients in meeting the requirements of these different programs, which has resulted in safer and healthier workplaces as well as substantial cost savings. We have also worked with our clients in obtaining free safety and health consultation.

Wellness Programs

As the workforce ages, employees are at a higher risk of on-the-job injuries. At the same time, the younger incoming workforce is composed of more overweight and obese individuals. Not only will these individuals become injured more frequently and take longer to recover, but they also have a higher rate of Type II Diabetes and hypertension. As a result, employers will incur an increase in both their workers' compensation and healthcare costs. Fisher & Phillips can work with you to develop an effective company wellness program which will focus on getting and keeping employees healthy and on-the-job.



Hazardous Chemical and Process Safety Management Compliance

Each year hundreds of new hazardous chemicals are developed throughout the world. As a result, more employers are utilizing and more employees are exposed to these hazardous chemicals. OSHA standards require that processes containing certain hazardous chemicals be strictly monitored. In addition, employers using hazardous chemicals are required to provide information to their employees regarding the hazards of the chemicals to which they may be exposed. Similarly, many substances may fall under standards governing air contaminants, medical monitoring, personal protective equipment, and emergency response. The complicated requirements of the Process Safety Management (PSM) standard may also be implicated. Fisher & Phillips attorneys have in-depth experience with these standards and have the expertise to assist you in complying with them.

International Safety and Health

Many U.S. operations are owned or affiliated with businesses in the European Union (EU) or other countries. We are familiar with the need to harmonize U.S. operations with global standards. Fisher & Phillips attorneys have also worked with safety and health officials from China, the 27 EU countries, Canada and other nations. Fisher & Phillips can assist you with international safety and health compliance needs. We can also assist in providing information and training to foreign company officials on U.S. safety and health requirements.

Trade and Business Association Assistance

Attorneys at Fisher & Phillips have worked with numerous trade and business associations on safety and health issues. We can provide associations with the necessary expertise and experience to assist them in improving the safety and health of their members' operations and facilities. We can also provide assistance to an association in presenting its comments on safety and health issues in Congressional hearings and OSHA rulemaking proceedings. In addition, we can prepare association witnesses to testify on safety and health issues in these proceedings. We also can handle court challenges to safety and health legislation and standards.

Media Relations/Communication Assistance

Fisher & Phillips has the expertise and experience to assist in handling media relations and communication when you are faced with serious catastrophic safety and health events which result in significant media attention. In today's instant media world, serious workplace accidents, fatalities and multiple injuries become headline news throughout the world in a matter of minutes. Fisher & Phillips has assisted with media relations involving major catastrophic workplace accidents, including being interviewed on "60 Minutes." We can assist you in dealing with the many complicated legal and employee relations issues arising from workplace fatalities and catastrophic accidents.



Working with Other Federal and State Agencies

Fisher & Phillips has significant experience in working with federal and state agencies beyond just OSHA and MSHA on safety and health issues. We have dealt with such agencies including the National Institute of Occupational Safety and Health (NIOSH), the Chemical Safety Board, the U.S. Department of Transportation, the U.S. Department of Energy, and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Let Us Show You What We Can Do

Contact Ed Foulke or Howard Mavity at Fisher & Phillips LLP, 945 East Paces Ferry Road, 1500 Resurgens Plaza, Atlanta, Georgia 30326. They may also be contacted at (404) 231-1400 or at workplacesafety@laborlawyers.com.



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