

INSIGHTS

Biden's Selection of Doug Parker as OSHA Head Signals Aggressive Safety and Health Enforcement and Close Collaboration with Organized Labor

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On this past Friday, April 9, President Biden announced his intent to nominate Doug Parker, the current chief occupational safety and health regulator in California, to serve as the United States Department of Labor's Assistant Secretary for Occupational Safety and Health.

Parker's Background

Parker, a 1997 University of Virginia law school graduate, in a series of different job positions over his career, has consistently focused on the advancement of three priorities: (i) Democratic Party politics, (ii) organized labor, and (iii) occupational safety and health.

After holding various political positions prior to attending law school, including serving on the staff of then Sen. Paul Wellstone of Minnesota and working for the Democratic National Committee, Parker switched his focus following graduation from party politics generally to organized labor by first serving as a staff attorney for the United Mine Workers and then as a partner with a Washington, DC law firm devoted to representing unions.

In 2009, Parker once again changed the focus of his career to occupational safety and health by serving in positions with the Mine Safety and Health Administration and then with an Oakland-based nonprofit legal organization committed to advancing the occupational safety of California workers.

In 2019, Parker assumed his current regulatory position overseeing Cal/OSHA as an appointee of Gov. Gavin Newsom.

In that position in 2020, Parker was key to the adoption of California's controversial COVID-19 emergency standard which business organizations have criticized as unnecessarily burdensome.

Parker and COVID-19 Regulation

One immediate question that the Parker nomination raises is whether he will aggressively press for a federal OSHA emergency COVID-19 standard for American workplaces. While certainly businesses may worry about Parker bringing California-style COVID regulation to employers nationwide, timing suggests that a federal COVID standard will not be a priority for Parker at this juncture.

Specifically, Secretary of Labor Marty Walsh last week placed the adoption of any immediate COVID-19 OSHA standard on hold pending further analysis of the current data, and it seems unlikely, given federal case authority concerning temporary emergency standards, that an aggressive federal COVID-19 standard at this point could survive a legal challenge.

Other Likely Priorities for Parker

Parker has been a forceful critic of businesses' use of monetary incentives for employees tied to low reported injury rates - based on the notion that these payments effectively discourage injury reporting. Parker criticized the Trump Administration for watering down prior Obama-era regulatory guidance that indicated those incentives could violate provisions of the Occupational Safety and Health Act.

Employers should expect that OSHA under Parker will again focus on what it sees as the abusive use of incentive programs by businesses.

Also, based upon his past advocacy, employers should expect that Parker will devote greater attention to workplace exposure to dangerous airborne chemical contaminants.

For instance, in 2017 while advocating for occupational safety in California, Parker expressed particular concern about occupational lead exposure in some manufacturing and other businesses - even under existing lead standards.

Additionally, in his prior work, Parker has criticized employer post-accident drug testing programs that, in his view, might effectively discourage injury reporting. For instance, Parker suggested that an employer program to test every employee reporting an injury improperly discourages reporting of workplace injuries. Employers should not be surprised if Parker adopts a more aggressive regulatory view with regard to post-accident drug testing - as was a focus during the final months of the Obama administration.

Prepare for More Aggressive OSHA Enforcement Generally

More broadly, employers should anticipate new and more unforgiving pressure from Washington to improve safety performance across the board.

Leaving no doubt that occupational safety has been a long time and personal priority, Parker, as a point of pride, has commented previously on how his father, a divisional power company manager when Parker was growing up, took great satisfaction in the absence of serious worker injuries on his watch and how his father pioneered morning safety meetings at his company in the 1950s.

In sum, employers should expect far more aggressive and impassioned OSHA leadership. Businesses need to sharpen their focus on OSHA compliance and utilize appropriate tools, like self-auditing, to prepare.