

Executive Orders: Impact on EHS

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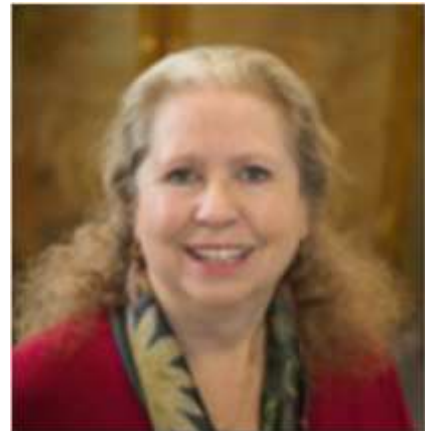
Presented By

Adele L. Abrams is an attorney, Associate Safety Professional (ASP) and Certified Mine Safety Professional (CMSP) who is president of the Law Office of Adele L. Abrams P.C., in Beltsville, Maryland. She represents employers in OSHA and MSHA litigation nationwide, and also handles employment law matters in a large number of states. Abrams also provides employment and safety law consultation, safety audits, industrial hygiene assistance, and training services to companies in a variety of industries. In April 2025, she will join Littler Mendelson in their Washington DC office as senior counsel and head of the MSHA practice.

She is a member of the Maryland, D.C., and PA Bars; the U.S. District Courts of Maryland, D.C., and TN; the U.S. Court of Appeals, D.C. Circuit 3rd Circuit, and 4th Circuit; and the United States Supreme Court. She also serves on the adjunct faculties of the Catholic University of America in Washington, D.C., and the University of Colorado-Boulder, where she teaches on employment, labor and occupational safety law.

Abrams is a professional member of ASSP and is an active member of the National Safety Council, where she was awarded the Distinguished Service to Safety Award (DSSA) in 2017. She is also an Avetta Fellow. Abrams has coauthored several textbooks on employment law, occupational and mine safety and health, and is a regular columnist on safety law issues for multiple magazines.

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Project 2025 & Environmental Regs

- Trump [rolled back more than 100 environmental regulations](#) during his first term in office
- Former NY Rep. Lee Zeldin heads EPA (voted against climate change legislation) – rescinded 31 regulations on 3/12/25- said he was “driving a dagger straight into the heart of climate change religion to drive down the cost of living for American families, unleash American energy, bring back auto jobs and more”
- Latest actions involve reconsideration of regulations on power plants, regulations on the oil and gas industry, mercury & air toxics standards targeting coal-fired power plants, Greenhouse Gas reporting program, Steam Electric ELGs, wastewater regs for coal power plants, and the Risk Management Program rule, the tech transfer rule, endangerment findings, NESHAPs, and PM 2.5 NAAQS rules
- Targeted rules: ambient [air quality] standards, regulations on greenhouse gas emissions [from cars](#) and [power plants](#), TSCA regulations impacting both public and occupational health – all among Project 2025 recommendations
- ✓ SEC final rule for ESG - requiring large publicly traded companies to disclose climate action, GHG emissions, and the financial impacts of severe weather events – was set to go into effect in 2026 but implementation delayed due to lawsuits – unlikely to survive SCOTUS

TSCA Under Trump

- **USWA Case – Oral Arguments on 3/21/25 suggest US Ct of Appeals DC Cir. Favor Biden rule over Trump 1.0 interpretation**
- This would bar EPA from excluding chemical uses from evaluations under TSCA and the EPA decision to make a single finding of unreasonable risk for the “whole chemical,” rather than following the first Trump administration’s approach of crafting separate determinations for each use
- **Senior Judge indicate non-consideration of PPE issue may not be ripe**
- A decision will complicate plans to roll back the Biden EPA rule but also opens door to SCOTUS review of rule post-Chevron!

Project 2025 & DOL

Regulatory Freeze: 10 Out/1 in approach will trim existing regs

Project 2025 would enable corporations to cut overtime pay, relax worker safety rules, allow workplace discrimination, and more:

- Project 2025 endorses allowing young people to work in “inherently dangerous jobs,” in roles that are currently not permitted due to significant safety concerns that have long been established and enforced by the U.S. Department of Labor (DOL). Project 2025 would change DOL policies and allow America’s youth to work these jobs, meaning young people entering the labor force out of economic necessity could be subjected to more dangerous work
- Project 2025 proposes lowering the threshold for the minimum wage, and taking away overtime eligibility for millions of workers
- It would consolidate the U.S. Bureau of Economic Analysis and Census Bureau with BLS into one agency, eliminating BLS independence – BLS currently measures employment, compensation, worker safety, productivity, and price movements

Who’s on First?

- US Dept of Labor: Secretary Lori Chavez DeRemer confirmed (former GOP Rep. from OR)
- OSHA Nominee: David Keeling (consultant, former OHS specialist for UPS and Amazon – transportation safety background)
- MSHA Nominee: Wayne Palmer (Executive VP, Essential Minerals Assn. – and MSHA Deputy in Trump 1.0)
- OSHRC & FMSHRC: Both lack some Commissioners (FMSHRC in full Democratic control with two empty seats) – Trump has asserted control over independent agencies and claims right to fire ALJs – likely to face legal battle
 - Trump has dismissed members of the NLRB and the EEOC – both matters in litigation over his power to dismiss board-appointed members of independent agencies
 - Chemical Safety Board likely to be in crosshairs or defunded entirely in future budgets
 - Concerns about budget cuts and staffing issues at NIOSH (including cutoffs in grants and disruption of ongoing research due to inclusion within CDC)

Pending Legal Challenges: OSHA “Walkaround Rights” & MSHA Crystalline Silica Rules

- OSH Act of 1970 gives employers and employees the right to authorize a representative to accompany OSHA officials during a workplace inspection
 - Final rule published in April 1, 2024, Fed. Reg. <https://www.govinfo.gov/content/pkg/FR-2024-04-01/pdf/2024-06572.pdf> - took effect 5/31/24 and in litigation (NO HOLD)
- Final Rule grants “walkaround rights” during OSHA inspections to non-employees, such as a third-party or a union representative, when those individuals are “reasonably necessary” to “aid in OSHA inspections as the employees representative – takes effect May 31, 2024!
 - Rule clarifies the relevant knowledge, skills and experience with hazards in the workplace, or language skills, for those authorized by employees to assist with the inspection as their representative – special knowledge can include IH experience, **language** or **communication** skills
- MSHA Crystalline Silica Rule – In litigation in 8th Cir. (no stay) and Coal provisions take effect 4/14/25 while Metal/Nonmetal provisions take effect 4/8/26
 - Rule is quite different from OSHA rule and legitimate feasibility issues
- QUESTION: How rigorously will the DOJ defend these rules against industry challenges?
- WHAT IMPACT OF SCOTUS *Loper Bright* decision?

Will OSHA Survive?

- HR 86 – “NOSHA Act” (Rep. Andy Biggs – R-AZ) – A BILL

To abolish the Occupational Safety and Health Administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Nullify Occupational Safety and Health Administration Act” or the “NOSHA Act”.

SEC. 2. IN GENERAL.

- *The Occupational Safety and Health Act of 1970 is repealed. The Occupational Safety and Health Administration is abolished.*
- **QUESTION: What impact on State Plan Programs if federal OSHA is abolished?**
 - Kentucky bill already seeks to weaken KY-OSHA and set up legal challenge -- measure would bar state regulators from enforcing “any occupational safety and health administrative regulation that the Occupational Safety and Health Administration of the United States Department of Labor has not promulgated, or that is more stringent than the corresponding federal OSHA provision (issue is Gov. veto override)
 - If federal OSHA abolished, multi-state employers will face crazy quilt of state rules (or states with no rules) undermining existing programs
 - What about US participation in GHS without a federal OSHA?

Demise of *Chevron* Deference

- SCOTUS 6/28/24 decision in *Loper Bright Enterprises v. Raimondo* overturned its 40-year precedential test – “*Chevron* deference” when evaluating whether courts should defer to an agency’s “reasonable” interpretation of “ambiguous” statutory language
- *Chevron* is a foundational test in administrative law, and was long used in OSHA/MSHA/EPA cases to help agencies preserve new rules or enforcement actions against claims that the agency went beyond its authorizing statute
- Concerns arising that judges can now substitute their views on a topic for those of the agency SME who drafted it, including disregard of comments and hearings in the development of the rule
- This is major incentive for “forum shopping” to find federal courts in districts/circuits most likely to kill federal rules as they will no longer have to “defer” to the agency’s expertise, experience & judgment

OSHA in the Crosshairs

- *Allstates Refractory Contractors LLC v. Su* (6th Cir. 2023) – Challenged constitutionality of Occupational Safety & Health Act of 1970 (OSH Act) – Former Trump White House counsel Don McGahn represents Allstates in this case!
- Coalition of industry and conservative groups sued to determine whether the congressional delegation to OSHA to set workplace safety standards violated the “Nondelegation Doctrine”
- “Nondelegation doctrine” holds that under separation of powers and tripartite government, Congress generally cannot delegate its legislative power to another Branch ... but this does not prevent Congress from seeking assistance of its “coordinate branches”
- The Petitioners want Congress, not OSHA, to “set whatever specific safety standards lawmakers think are necessary”
- Challenges to the OSH Act in the past were struck down (in 1978 and 2011) by 7th Cir. and DC Cir.
- 6th Cir “joined their sister circuits” in holding OSHA’s delegation to be constitutional (by a 2-1 vote)
- Appeal to SCOTUS failed to obtain certiorari ... but Justices Thomas and Gorsuch voted to grant review (4 votes are needed) and this is poised for another attempt

Trump 2.0 – Executive Orders

- Over 90 new Executive Orders since 1/21/25
- Many address “campaign” issues including:
 - National Security Bans on Certain Nations
 - Immigration Controls and Deportation
 - Protection of Mining, Oil & Gas Activities (“drill baby drill”)

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 - Illegal Drug Issues
 - Reducing size of federal govt bureaucracy
 - Anti-trans and LGBTQ orders

Trump Executive Orders Impacting EHS

- **EO 14219 (2/25 Fed Reg) – “Ensuring Lawful Governance & Implementing the President’s DOGE Deregulatory Initiative”** – states that within 60 days, all agency heads must identify several types of regulations, including those that:
 - Are unconstitutional or raise serious constitutional issues - rules that exceed the fed govt power established in the constitution
 - Are based on delegation of legislative power
 - Are based on anything other than a strict reading of authorizing statutes
 - Concern economic, political or social issues not clearly authorized by statute
 - Impose significant costs on private parties that are not outweighed by public benefits
 - Unjustifiably impede tech innovation, infrastructure development, disaster response, economic development, energy production, inflation reduction, R&D, land use and foreign policy objectives
 - ✓ **Following review each agency must develop Unified Regulatory Agenda that seeks to rescind or modify regulations as appropriate (prioritizing those with “significant impact” – e.g., SBREFA rules**
- **EO 14192 (1/31) – “Unleashing Prosperity through Deregulation”** – Agencies must **REMOVE 10** federal rules for every new one established

DOL Exec Orders!

- **EO 11246 (1/21/25); “To Cease and Desist All Investigative and Enforcement Activity Under Rescinded Order 11246”**
 - **RESCINDS** an Exec Order from 9/24/65 and regulations promulgated under it – includes enforcement by DOL under Office of Federal Contract Compliance, Office of ALJs and Administrative Review Board
- **EO “Ending Illegal Discrimination and Restoring Merit-Based Opportunity “**
 - This cancels ALL investigative and enforcement activity by DOL including all pending cases, conciliation agreements, investigations, complaints, and any other enforcement-related or investigative activity
 - All parties with open cases will be notified that the EO 11246 component of the review or investigation has been closed and any other review is held in abeyance
- **EO 14151 – Ending all federal DEI programs**

EOs on RIFs and Law Firms

- **EO 14238: Continuing Reduction of Federal Bureaucracy (3/14/25):**
- **EO 14237: Addressing Risks from Paul Weiss (3/14/25) – One of multiple Executive Orders targeting law firms that participated in litigation against Trump in personal capacity (or election fraud investigations) including C&B and Perkins Coie**
- **EOs terminate all firm employees' security clearances, all access to federal buildings (including courts, EPA, OSHA etc.), and cuts off ability to engage in federal contracts**
 - Settlement with one firm involved "apologizing for attorney's participation" and \$40M in pro bono service to advance Trump agenda

Environmental EOs

- **EO 14225 – Immediate Expansion of Timber Production**
 - "Our inability to fully exploit our domestic timber supply has impeded the creation of jobs and prosperity, contributed to wildfire disasters, degraded fish and wildlife habitats, increased the cost of construction and energy, and threatened our economic security"
 - Includes provision to use emergency provisions of Endangered Species Act to fast track timbering of lands (including national parks!)
- **EO 14162 - Putting America First in International Environmental Agreements**
 - United States' withdrawal from the Paris Agreement under the United Nations Framework Convention on Climate Change
 - immediately cease or revoke any purported financial commitment made by the United States under the United Nations Framework Convention on Climate Change
- **EO 14158 – Establishes DOGE as department in federal govt**
- **EO 14154: Unleashing American Energy**
- **EO 14156 – Declaring National Energy Emergency**

Thank you

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