

PUBLICATION

President Obama nominates David Michaels to lead OSHA

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On July 28, the White House announced that President Obama had selected epidemiologist David Michaels, Ph.D, MPH, to head OSHA as Assistant Secretary of Labor. Mr. Michaels must be confirmed by the Senate. He has prior government experience, serving as the Department of Energy Assistant Secretary for Environment, Safety and Health during the Clinton Administration. One of his achievements at DOE was to aid the passage of the Energy Employees Occupational Illness Compensation Program Act of 2000, designed to compensate nuclear weapons workers who developed illnesses as a result of exposure to radiation and chemicals in the workplace.

Dr. Michaels is currently a research professor and interim chair of the Department of Environmental and Occupational Health at the George Washington University School of Public Health and Health Services. There, his work includes studying the health effects of occupational exposure to toxic chemicals, including asbestos, metals, and solvents. In testimony before a Senate committee in 2007, Michaels expressed concern about several issues, including the underreporting of workplace injuries and illnesses, lack of new standards promulgated by OSHA, insufficient use of OSHA's General Duty Clause as an enforcement tool, and the outdated health standards still in place. Mr. Michaels' nomination has been hailed by Democrats. U.S. Representative George Miller (D-Cal.) stated that Mr. Michaels will help OSHA "restore vital health and safety protections for America's workers."

Dr. Michael's nomination comes at a particularly pivotal time for OSHA. Perhaps more so than at any time since its creation in April 1971, labor and Democratic leaders are clamoring to enhance enforcement and increase the promulgation of new regulations concerning workplace standards. The proposed Protecting America's Workers Act (HR 2067) would, among other things, expand OSHA's coverage to include more workers. It would also allow felony prosecutions against employers under certain conditions, raise civil penalties, and set mandatory minimum penalties for violations resulting in death. Following eight years of relative quiet - fewer OSHA regulations were promulgated under the Bush Administration than any other president - such changes would reinvigorate the agency. As a result, there's a backlog of initiatives to track, including combustible dust, diacetyl, new health standards, and a possible resurrection of the ergonomics standard. Representative Lynn Woolsey (D-Cal.) stated that OSHA will be able to "issue long overdue safety standards and bring back more vigorous enforcement of workplace safety and health standards."

Given the renewed emphasis on workplace conditions, employers should pay strict attention to matters that could be deemed administrative in nature, such as properly maintaining OSHA 300 Logs for Injuries and Illnesses. In addition, during this economic downturn, disgruntled ex-employees may be even more prone to claiming retaliatory discharge following allegations of health and safety violations in the workplace. Employers should also expect more OSHA attention and resources devoted to inspections and enforcement. OSHA routinely tracks not only the number of inspections but those that result in citations, with a goal of issuing a citation with every inspection. Finally, employers should carefully evaluate their workplaces for hazards, regardless of whether a specific regulation addresses a particular hazard, given Dr. Michaels's stated desire to increase the use of the General Duty Clause as an enforcement tool.

Our attorneys have conducted onsite OSHA presentations to members of clients' management, safety teams, safety departments and line employees, and have advised clients, including an asbestos-certified contractor,

on OSHA, EPA and TDEC asbestos regulatory requirements. We work closely with clients to enhance their safety and health programs to include OSHA compliance as well as an Industrial Risk Management program. We stand ready to assist you with these and other labor and employment-related challenges. For assistance, please contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys in the Firm's Labor & Employment Department, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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