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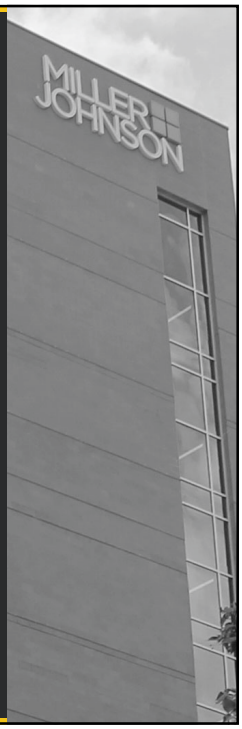
MIOSHA: What You Need to Know in 2025



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Today's Agenda

- MIOSHA Inspections
  - What triggers a MIOSHA visit
  - What happens at a MIOSHA visit
  - How to interact with MIOSHA Safety Officers
  - Documents you MUST have on-hand
  - Employer Rights and Obligations during the Inspection
- Common Citations
- Understanding the Appeals Process
- Best Practices
- New Updates

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Why Do We Have MIOSHA and Not OSHA?

- Federal Law: Occupational Safety and Health Act
  - Federal Agency: Occupational Safety and Health Administration (OSHA)
    - Federal law allows states to adopt and administer their own occupational safety and health laws – with OSHA's approval
    - 20+ states have their own plans for both public and private employers
    - 7 states have their own plans for public sector employees only
    - Remaining states are federal OSHA states
- State Law: Michigan Occupational Safety and Health Act
  - State Agency: Michigan Occupational Safety and Health Administration (MIOSHA)

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MIOSHA Inspections

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Reasons For MIOSHA Inspections

1. Programmed Inspections (Health and Safety Inspections)
   - Industry specific, job specific, national/state/local emphasis programs
     - Current emphasis programs: Heat illness, fall protection
     - Wall-to-wall (entire jobsite) or
     - Focused (abbreviated inspection – focus on Serious hazards only)
       - Fatal four – Falls, Struck By, Caught in/between, Electrocutions (i.e., the four leading causes of death)

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Current MIOSHA Emphasis Programs

- Heat
  - MIOSHA developed a Sample Heat Illness Prevention Plan that employers can use as a template to put procedures in place to reduce workplace heat-related illnesses.
  - Heat-Related Illness State Emphasis Program (May 22, 2025)
    - Increased inspections to 24 per year to evaluate employer's heat-illness prevention program.
- Silica
  - MIOSHA adopted a State Emphasis Program in 2024 to reduce employee exposure to silica and reduce occupational diseases caused by inhaling silica at construction sites. Cutting, grinding, drilling, demolition.
    - Significant changes to existing regulations include increased inspections and local building permit reviews and updated Industrial Hygiene Summaries for Silica Investigations.
- Excavation and Trenching
  - One of the most dangerous construction activities with 31 excavation fatalities in Michigan over the past two decades.
  - MIOSHA wants to ensure employers have accident prevention programs to prevent fatalities and injuries.
  - July 25, 2024 – National Emphasis Program. Open trench + MIOSHA drive by = inspection

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Current MIOSHA Emphasis Programs cont.

- Fall Prevention
  - Falls are the leading cause of death in workplace accidents. MIOSHA has adopted a National Emphasis Program focused on education and training to help employers prevent workplace falls.
  - MIOSHA provides Fall Protection related training videos and resources, job safety checklists, sample plans, and resources to help employers implement accident prevention programs.
- Safety and Health Programs
  - MIOSHA encourages employers to implement safety and health programs to prevent and reduce workplace injuries, illnesses, and deaths.
  - Improving workplace safety also improves productivity and reduces costs for both workers and employers.
- Mental Health in the Workplace
  - MIOSHA currently has no regulations that address workplace stress but encourages employers to have mental health resources available in the workplace.

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Current MIOSHA Emphasis Programs cont.

- Youth Workers
  - MIOSHA promotes safety training for youth workers.
  - Employers must know what activities are prohibited for youth workers:
    - Excavation, highway, bridge, or street construction, roofing, wrecking, or demolition
    - New commercial or new residential construction, including clean up
    - Contact with hazardous substances, chemicals, explosives, or radioactive substances
    - Operating large construction equipment such as cranes and bulldozers
    - Operating power-driven woodworking equipment, tools, saws, or machinery
    - Brazing, welding, soldering, or heat-treating

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Unprogrammed Inspections

2. Unprogrammed Inspections
   - Complaint by employee (Whistleblower)
     - Please do not fire employees for reporting you to MIOSHA
   - Accident report (Health and Safety Inspection)
     - The more severe the injury, the more likely MIOSHA will inspect you
   - Fatality/Catastrophic (FAT-CAT) (Health and Safety Inspection)
     - Fatality or hospitalization of 3 or more workers
     - Must be reported within 8 hours
     - In 2023, 5,283 fatal work injuries occurred in the United States, and 1,075 of those fatal injuries were in the construction industry.
   - Dodge reports
   - Visual activity – See potential hazards on your jobsite

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Dodge Reports: Construction Inspection Targeting

- Because of the mobility and transience of the Construction Industry, MIOSHA uses the Dodge Report to select from current active projects for inspections.
  - Inspections are selected from a list of construction worksites, not from a list of construction employers.
  - This selection process utilizes national data on anticipated or active construction projects from F.W. Dodge and selects projects for inspection using a model developed by the University of Tennessee and administered by OSHA
  - Specifically identified hazards or a narrow range of construction activities are addressed by other MIOSHA targeting systems like state emphasis programs and special initiatives.

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Phases of a MIOSHA Inspection

Rights & Responsibilities and

Recommendations for Interactions

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Phases of a MIOSHA Inspection

1. Arrival and initial entry at jobsite
2. Opening conference
3. Inspection "walk around"
4. Closing conference

MIOSHA
Michigan Occupational Safety and Health Administration

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1. Arrival and Initial Entry

- Safety Officer will arrive and present credentials/business card
- Rights: Are you entitled to advance notice of any inspection?
  - No – and you usually do not receive advance notice, but sometimes you will be given advance notice
- Rights: Can you refuse entry?
  - Yes, but MIOSHA will return with a warrant and a police officer – this may buy you time, but it will make things worse
- Responsibilities: Safety Officer must reach his/her inspection site within 60 minutes
  - We can make the Safety Officer wait up to 60 minutes – but be reasonable

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Best Practices for Arrival and Initial Entry

- Designate several individuals as the go to contacts for handling MIOSHA inspections on the jobsite (foreman; site manager)
- Make sure your other employees on the jobsite know to contact these designated individuals
- Contact the designated individuals immediately
- Interactions: Ask Safety Officer to wait in an area away from the main jobsite or in the trailer until the appropriate people can be contacted and arrive at the jobsite
- Interactions: Be nice

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2. Opening Conference

- Rights: Employers are entitled to an opening conference
- Management representatives and an employee representative (if unionized) are present
- You will be given a copy of the written complaint (if there is one)
- How to interact with the Safety Officer:
  - You can ask questions
  - You can ask for abatement advice
  - Safety Officer will seek consent to photograph and videotape at your jobsite
  - Select a representative to accompany the Safety Officer during the walk-around

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2. Opening Conference (Cont.)

- Documents to have ready:
- Written Accident Prevention Program – copy on every jobsite
- Safety Officer may ask to see your 300 logs, 300A summaries, and 301 injury reports (Home Office)
- Safety Officer may ask to see your written safety programs
- Safety Officer may ask for other written safety policies, equipment inspection records, and/or other documentation
- Safety Officer will eventually want to see workplace postings

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Best Practices for An Opening Conference

- Always have an opening conference
- Use that time to determine exactly what the Safety Officer wants to see
  - Then show the Safety Officer only what he/she wants to see
- During the opening conference, have someone walk through the jobsite and look for obvious safety hazards – and fix them immediately (employees not wearing PPE, trip hazards, blocked emergency equipment and doors, etc.)
  - Last Minute "House Cleaning" – contact managers, let them know MIOSHA is inspecting, and ask them to fix any potential safety issues immediately
- You can make the Safety Officer wait for up to 60 minutes while you prepare to take him/her on the inspection – use that time to your benefit – but be reasonable

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3. Walk-Around Inspection

- Rights: Employer has the right to accompany Safety Officer
  - Safety Officer should never be unaccompanied
  - Employer representative may not be disruptive or interfere with the inspection
  - Show Safety Officer only what he/she wants to see and "plan" route accordingly
    - Example: Complaint was about the first level of the structure – take the Safety Officer directly to that level – do not give him/her a tour the entire jobsite
- Safety Officer will take photos and/or video
  - When Safety Officer takes a picture, so should the employer

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3. Walk-Around Inspection (Cont.)

- Safety Officer will want to see required postings (MIOSHA; General Labor and Employment Law Posters)
- Safety Officer may wish to interview employees on the jobsite
  - Safety Officer can also interview employees after hours – rare – but possible

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MIOSHA Guidance on Private Interviews: Health and Safety Inspections

- Employer has *no right* to attend a private interview with a non-management employee.
  - If non-management employee voluntarily requests that a member of management be present – then SO must make a reasonable effort to honor that request
  - You can debrief the employee in a non-threatening manner after the fact to gather more information about OSHA or MIOSHA's concerns.
- MIOSHA has also occasionally been requiring private interviews with management employees in Health and Safety inspections too.
  - If the managerial employee requests that a member of management be present, then SO must make a reasonable effort to honor the request (Some SO's are refusing to let the employer sit in on manager interviews).
  - Tell all management employees to request that another member of management be present with them in an interview.

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NEW MIOSHA Guidance on Private Interviews: MIOSHA Discrimination Investigations

- Employer has *no right* to attend a private interview with a non-management employee *or currently employed manager*
  - Private means that the only individuals who can be present are the MIOSHA rights representatives, the interviewee, and as necessary, a foreign language translator or transcriptionist.
  - Witnesses may not have an attorney or other personal representative regardless of whether the witness has signed a "Designation or Representative" form.
  - Complainants and witnesses appearing pursuant to subpoenas also may not have counsel or other qualified representatives with them.
- You can still debrief the employee in a non-threatening manner after the fact to gather more information about MIOSHA's concerns.

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Safety Officer and Employees

- Rights: Safety Officer does not have right to see operations not being performed or to ask for demonstrations of how we use our equipment or machines
- Rights: MIOSH Act gives an employee representative the right to participate in an inspection
  - Union representative may wish to participate in employee interviews and the walk-around
- Remember: New walkaround rule might expand access for third party non-employee representatives (Union business agents, etc).

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Abatement

- Safety Officer may offer abatement assistance during inspection
  - Best Practice – Pay attention to what the Safety Officer says regarding abatement
- Immediate abatement may result in lower classification or penalty – or the Safety Officer might not even cite you for it
  - Best Practice – If you can immediately fix something during the inspection, fix it, and then let the Safety Officer know you fixed it before he/she leaves

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4. Closing Conference

- Closing conference often is not held the day of the inspection – time delay between inspection and closing conference
- May be done by telephone or in person
  - In person is generally more effective
  - Closing conferences regarding exposure testing almost always done over phone
- Employee representative (if any) should be included in closing conference
  - Rights: Employer may request separate closing conferences – if so, the closing conference involving the employee's representative will be held first
- Safety Officer will review proposed violations and means of abatement

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MIOSHA Inspection Survival Tips

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1. Separate the Adversarial from the Non-Adversarial

- Inspections can be educational; Safety Officers may indicate more effective or efficient safety practices – listen
- Do not argue with the Safety Officer, but do not hesitate to politely correct incorrect facts or assumptions
- Inspections are conducted to issue citations – do not offer up examples of other safety issues that we are "aware of" and are "working to fix" – it is usually better to listen than to talk

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2. Ask Questions & Document

- Ask questions
  - Especially during the closing conference
    - Understand the basis for a citation, ask for information, provide additional information at the closing conference – it may be possible to talk your way out of a citation if the Safety Officer was unclear or mistaken about something
    - Preserve potential evidence to defend yourself – photographs, video footage (turn off auto delete), witness statements, documentation
- Document the visit as soon as possible
  - Conduct your own interviews, if you have not done so already
- Obtain copy of MIOSHA's inspection file (FOIA)(takes time)

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MIOSHA Citations

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Types of MIOSHA Citations and Monetary Penalties

- Serious –$7,000/violation maximum fine – "likely to cause serious physical harm or death"
  - Federal OSHA - $16,550*
- Other than serious ("OTS") - $7,000/violation maximum fine – but always much less
- Failure to abate - $7,000/day for every day past the abatement date
  - Federal OSHA - $16,550/day*
- Willful or Repeat –$5,000-$70,000/violation
  - Willful = knowing failed to comply/plain indifference to employee safety
  - Federal OSHA - $165,514*
- De minimis – no penalty; no abatement requirement
  - *MIOSHA fines are less than OSHA fines

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Top 10 OSHA Citations in the Construction Industry

1. Fall Protection – 6,244 violations
2. Hazard Communication – 2,888 violations
3. Fall Protection Training – 2,021 violations
4. Eye and Face Protection – 1,934 violations
5. Ladders – 1,927 violations
6. Health and Safety – 1,524 violations
7. Scaffolding – 1,479 violations
8. Excavation Safety Requirements – 916 violations
9. Head Protection – 804 violations
10. Aerial Lifts – 517 violations

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New OSHA/MIOSHA Guidance on PPE

- OSHA announced a new rule effective January 13, 2025.
- The new rule requires all employers engaged in construction work to provide employees with PPE that properly fits the employees' body shape and size.
  - The new rule says PPE must be "selected to ensure that it properly fits each affected employee."
  - The general industry standard already includes a "proper fit" requirement, but *this is new for the construction industry standard*.
- The rule was created by OSHA, but MIOSHA will have to implement an equally effective rule.

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Handling MIOSHA Citations

- "We've received a proposed citation. Now what do we do?"
  - Act quickly – first appeal must be filed within 15 working days from when you receive citations
    - Do not let MIOSHA citations sit around a while before you deal with them
- First step – Determine whether you should appeal or settle
  - Information learned during inspection and closing conference can be used to evaluate decision to appeal or settle

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Appeal or Settle?

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Appeal or Settle?

- MIOSHA must prove the following:
  - There is an applicable standard (or the general duty clause)
  - A hazard existed in violation of the standard
  - An employee was exposed to the hazard
  - The employer knew or should have known about the hazard
    - If MIOSHA cannot prove all of these elements, you may want to appeal
- Are the penalties justified?
  - Monetary penalty calculated correctly?
  - Classified correctly?
- Do we want this on our record?
  - Construction employers – Too many serious violations can cost you jobs – OSHA online search = 5 year history of your citations

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Appeal or Settle? (Cont.)

- Is abatement reasonable?
  - Too expensive; not enough time
    - You can also simply request additional time to abate the hazard
- Do we have an affirmative defense?
  - Unavoidable employee misconduct (more later)
  - Timeliness – 90 days after the completion of the physical inspection or investigation (closing conference)
  - Improper inspection – some portion of the inspection was unreasonable and it prejudiced the employer
  - Infeasibility – compliance is impossible and other appropriate measures have been taken to protect employees
  - Creation of greater hazard – complying with the standard would be more dangerous than not complying with it

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Appeal or Settle – Employee Misconduct

- An employee doing something that he/she was not supposed to be doing – or just generally doing something dumb – often leads to workplace injuries and MIOSHA citations
  - Most of the time, this does not give rise to a legitimate unavoidable employee misconduct defense
  - Employer must show:
    - Clear work rule, and if followed, it would have prevented the violation
    - Rule was effectively communicated to employees (documentation)
    - Procedures were in place to discover violations of this work rule
    - When the rule has been violated in the past, employees are consistently disciplined
      - Employees do dumb things at work – but this defense is more difficult than it appears

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Options

- Weigh all of your options – and then determine if you want to appeal the citations or settle/pay the fine
- For most citations, the employer violated the standard, and MIOSHA can prove its case
- No appeal? Make sure the problem is fixed, and periodically monitor the issue – Avoid a repeat citation

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Penalty Reduction Agreement

- If you do not want to contest the citation, then consider the online Penalty Reduction Agreement (PRA) process
- PRA
  - Employer accepts all citations
  - Employer agrees to abate all hazards by the date on the citation
  - Fine is automatically reduced by 50%
  - A PRA must be applied for online between 5-15 working days after the citation is received
    - Not all citations qualify for a PRA
      - Fatalities
      - Employer is in the Severe Violator Enforcement Program
      - Willful violations
      - Unabated Construction Division investigations

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MIOSHA Appeal Process

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Steps to a MIOSHA Appeal

1. Informal conference
2. Employer 1st Appeal
3. MIOSHA determination
4. Employer 2nd Appeal
5. Pre-hearing settlement conference
6. Hearing before MOAHR ALJ
7. ALJ Decision
8. Adopted or modified by the Board of Health and Safety Compliance and Appeals
9. Circuit Court, Court of Appeals, Michigan Supreme Court

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Federal OSHA Appeals

- Federal OSHA citations have a similar appeal process
- One important difference:
  - In the federal system, you can ask for an informal conference with the District Director (or his/her representative) within the first 15 days – and you will receive one – and you can potentially receive reduced fines and citations
  - I recommend that you ask for an initial informal settlement conference for all federal OSHA citations

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Best Practices

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Safety and Health Program

- The best way to reduce your potential liability is to adopt and administer an effective workplace Safety and Health Program
  - Construction employers – required to have an "Accident Prevention Program"
  - When an effective Safety and Health Program is in place – there are fewer injuries, fewer MIOSHA inspections, employees are more engaged, less down time, WC costs decrease, ultimately saves you money
    - This program should be memorialized in writing

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Safety and Health Program – 7 Core Elements

1. **Management commitment and leadership**
   - Communicate company commitment to employee safety and health, and it should be signed by top management
   - Define program goals
   - Allocate resources toward safety goals – Budget for safety
   - Expect performance – Identify frontline leaders and track progress toward safety goals
2. **Employee involvement**
   - Employee participation – Safety committees
   - Employees report safety issues
   - Employees are regularly provided safety and health information

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Safety and Health Program – 7 Core Elements (Cont.)

3. **Hazard Identification and Assessment**
   - Collect information about workplace hazards – injury reports, talk to workers
   - Inspect the jobsite for safety and health hazards
   - Incident investigations
4. **Hazard Prevention and Control**
   - Identify control options – eliminate hazard, change tools or equipment, change the way people work, new PPE
   - Select and implement the control options
   - Monitor to make sure control options are effective

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Safety and Health Program – 7 Core Elements (Cont.)

5. **Education and Training**
   - Train managers and employees about the Safety Program itself
   - Train managers and employees about their roles in the program
   - Train managers and employees about specific hazards and how to control them – Toolbox Talks
6. **Program Evaluation and Improvement**
   - Periodically evaluate safety program, identify shortcomings, and fix them
7. **Communication and Coordination with Staffing Agency Employees**
   - Communicate with an make sure temps are involved in safety program – joint responsibility – mainly host employer

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Tips for Preventing Injuries

- Periodic workplace hazard assessments – Every 6 months or so.
- Regular safety meetings with employees and Safety Manager.
- Initial employee safety training – and periodic retraining (annual or when processes change).
- Periodic equipment and job evaluations – Can employees change the way they work so they expose themselves to fewer hazards? Can we put a different guard on the machine that protects workers better, but does not hinder production?

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Could Company Have Avoided All Citations In This Situation?

- Probably not.
- Thousands and thousands of MIOSHA standards.
  - I guarantee we are all are violating some MIOSHA standards right now.
- Take safety seriously – Safety and Health Plan.
- Definitely devote resources to the most serious safety hazards that are likely to result in death or serious physical injury.
  - Falls, Struck by/run over by vehicle/equipment, Caught in/between, electrocution

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NEW Info

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New MIOSHA Guidance on Non-employee Third-party Representatives — March 4, 2025

- MIOSHA amended Administrative Rule Part 13 to align with the new federal standard for the Worker Walkaround Representative Designation Process Rule.
  - This change alters who can be an employee representative and what those representatives can do during MIOSHA inspections.
- The new rule allows third-party representatives during inspections when deemed "reasonably necessary."
  - Employee representatives no longer need to be employees of the company being inspected.
  - Third-parties who could potentially participate in inspections include: union representatives, attorneys, and community organizers.

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MIOSHA Guidance on Non-employee Third-party Representatives (Cont.)

- The new MIOSHA rule permits:
  - Employee representatives can be internal employees or third parties.
  - Third-party reps must be approved by the CHSO based on a "reasonably necessary" standard — this could include safety expertise, hazard knowledge, or language skills.
  - These reps can accompany the CHSO during the walkaround portion or an inspection and participate in opening and closing conferences.
  - They cannot interfere with the inspection, solicit employees, or engage in unrelated activities.
  - Employers still have the right to restrict access to trade secret areas.

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MIOSHA Guidance on Non-employee Third-party Representatives (Cont.)

- Practical and legal risks for employers:
  - This could give union access to non-union worksites under the guise of "safety expertise."
  - Plaintiff attorneys or "experts" could use inspections to collect information for future lawsuits.
  - Disgruntled former employees, media, or activist groups may seek access, too.
  - Employers will need to take extra care to protect sensitive information (trade secrets) from exposure.
- Even if the federal rule is rolled back, the Michigan rule is likely to stay since it would arguably be more protective of employee safety and health and would be supported by the current administration and legislature in Michigan.

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MIOSHA Guidance on Non-employee Third-party Representatives (Cont.)

- How to adapt to the new rule:
  - Establish a Trained MIOSHA Inspection Team: Assign a go-to team for inspections and provide them with specific training—especially on how to handle walkaround requests from third parties.
  - Designate Trade Secret Areas: Identify parts of your facility containing proprietary or sensitive information, and ensure you have procedures to restrict access.
  - Implement Visitor NDAs: Require third-party representatives to sign confidentiality agreements as a condition of entering your facility.
  - Empower Internal Safety Committees: Having well-trained internal employee reps ready to assist MIOSHA Safety Officers may reduce the perceived "need" for third-party reps.
  - Plan for Multilingual Needs: Identify internal interpreters ahead of time to prevent MIOSHA from bringing in an outside party solely for language support.

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Other Current Legal Issues

- New avenue for whistleblowers to sue for retaliation.
  - Last summer, the Michigan Supreme Court ruled in *Stegall v. Resource Technology Corporation* that employees who are retaliated against for reporting workplace safety concerns to OSHA and MIOSHA can bring lawsuits for violations of Michigan's public policy.
  - The court's analysis is based on the exclusivity and adequacy of statutory remedies.
    - Initially, if a statutory scheme is cumulative, public policy claims may proceed.
    - In *Stegall, t*he Court said the current OSHA/MIOSHA antiretaliation provisions are inadequate because of "[t]he 30-day limitation, the unfettered discretion granted to the department, and the employee's lack of control over what occurs after a complaint has been filed . . . ."
  - Big idea: whistleblowers can sue for retaliation based on violations of Michigan's public policy because the MIOSHA/OSHA antiretaliation provision is inadequate.

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Construction Industry Labor Shortages

- 2025: national construction industry-wide labor shortage
  - 88% of construction firms are struggling to find laborers despite an increase in job openings in 2023 (after the pandemic).
  - January 2025: industry was projected to need to hire 439,000 new workers.
  - Immigration policy uncertainties could affect the number of laborers available for hire.
  - A limited hiring pool increases the need for workplace safety.
    - Reliance on subcontractors and temporary labor also increases safety risks.
- Michigan Statewide Infrastructure Workforce Plan (May 1, 2025)
  - New plan to train 5,000 new infrastructure workers by 2030 to help increase the number of skilled and trained workers ready for hire on transportation, energy, water, etc., infrastructure projects.

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