

INSIGHTS

U.S. Department of Justice Expands Worker Endangerment Initiative

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On December 17, 2015, Deputy Attorney General Sally Yates issued a memorandum to all 93 U.S. Attorneys urging federal prosecutors to work with the Department of Justice Environment and Natural Resource Division (ENRD) to pursue worker-endangerment violations. The announcement culminated a year-long effort to consolidate authorities to pursue worker-safety criminal allegations within the ENRD. The government is encouraging prosecutors to consider Title 18 statutes (such as obstruction, false statements, witness tampering, and conspiracy) as well as environmental crimes when making charging decisions. The goal is to enhance penalties and increase deterrence for worker-safety-related crimes. The Assistant Attorney General for ENRD, John C. Cruden, has made clear that his division intends to “remove the profit from these crimes by vigorously prosecuting employers who break safety and environmental laws at the expense of American workers.”

To enhance coordination between the U.S. Department of Labor (DOL) and the Department of Justice (DOJ), the departments also executed a memorandum of understanding. The MOU provides for coordination of workplace-safety matters that could lead to criminal prosecution by the DOJ. For example, the MOU establishes a referral procedure to discuss employers who may be targets for enhanced investigation or criminal referral to the DOJ.

Recommendation

Employers may want to review their policies for incident investigations under OSHA’s process safety management standard and EPA’s risk-management program. Employers could also consider conducting a privileged review of their compliance-and-ethics program.