

December 21, 2015

## DOJ and DOL Expand and Promote the Worker Endangerment Initiative

The US Department of Justice (DOJ) has announced an expanded national initiative to pursue criminal charges in cases involving worker endangerment. Deputy Attorney General Sally Quillian Yates directed all 93 United States Attorneys' Offices to participate in this effort. Previously DOJ gave new authority to the DOJ Environmental Crimes Section (ECS) to prosecute worker safety cases, and ECS and the US Department of Labor (DOL) have entered into a Memorandum of Understanding (MOU) to share information, make criminal case referrals and jointly investigate such cases. As a result, employers should assume that information regarding workplace safety investigations by OSHA will be looked at by federal prosecutors. The initiative is based on the belief that companies that have worker safety violations may also have violated environmental statutes, and thus could face the far more stringent criminal sanctions under the environmental laws.

The December 17 announcement follows DOJ's decision in August 2015 to grant criminal enforcement authority for worker safety statutes to ECS. ECS typically prosecutes using the felony provisions in environmental criminal statutes, which only require proof of "knowing" conduct. These sanctions are far easier to obtain than the limited criminal penalty in the OSH Act. The worker safety statutes covered include the Occupational Safety and Health Act (OSH Act), the Migrant and Seasonal Agricultural Worker Protection Act, the Atomic Energy Act, and the Mine Safety and Health Act.

The MOU between DOL and ECS allows DOL to make a direct referral of an OSH Act case to ECS (or to a United States Attorneys' Office with notice to ECS). This will give ECS a larger pool of possible criminal referrals. DOL also agreed to share all investigation files with DOJ to the extent the information is needed to develop or litigate a case.

Deborah Harris, Chief of ECS, has been a long-time advocate for this initiative. This announcement follows on the efforts of Ms. Harris and ECS over the past several years to train hundreds of OSHA inspectors on both environmental and Title 18 offenses, encouraging them to identify possible environmental criminal matters for investigation in the course of their work.

Copies of the memo to the U.S. Attorneys is available [here](#) and the MOU is available [here](#).

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