



Must Poultry Employers Comply with Terms of Letter from Heads of USDA and OSHA?

Insights

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OSHA recently reminded the Poultry Industry that it has not lost interest in a multiple front attack on processors, as shown by the almost \$1,000,000 in citations issued against a Midwestern processor. You should view these startling OSHA citations as part of an overall DOL strategy involving bringing actions and encouraging employees to bring ergonomic, wage-hour and other claims.

In this context, senior officials of the Department of Agriculture and OSHA recently issued an unusual joint letter requiring poultry industry employers to place a new safety poster in their facilities. The June 12, 2015 joint letter instructed poultry employers to place the posters where “notices to employees are customarily displayed.”

The new USDA/OSHA poster provides employees with largely the same information as OSHA’s “*It’s the Law*” poster, which must be posted and notifies employees of their whistleblowing rights and an employer’s duty to report certain accidents and injuries to OSHA. The new USDA/OSHA poster goes further and also includes information on how an employee may identify and report ergonomic related injuries. It states that:

“OSHA and the Food Safety and Inspection Service encourage you to report the early signs of work-related injuries and illnesses including: Hand pain and/or numbness, [and] Locking or stiffness in fingers, etc.”

The policy behind this new poster is obvious. It comes on the heels of the release of NIOSH’s study finding ergonomic hazards in food processing positions requiring repetitive motions. OSHA, indeed, recently began citing poultry employers under the general duty clause for alleged ergonomic hazards.

The USDA/OSHA joint letter raises interesting compliance issues for employers.

Does the Law Require You to Post this Poster?

A strong argument can be made that applicable law does not require a poultry employer to post the USDA/OSHA poster.

First, the letter is not a regulation. It’s merely a letter requesting that action be taken. Heads of government agencies cannot mandate action with a simple demand.

Second, we read OSHA's regulations to require displaying only the OSHA "*It's the Law*" poster. This publication provides employees notice of their fundamental rights under the OSH Act. The new USDA/OSHA poster adds little information not found in the "*It's the Law*" notice. These agencies have teamed together apparently in an attempt to require poultry employers to raise awareness of possible ergonomic issues in their workplaces. This appears to go above and beyond what the law requires.

Should you Post this Poster?

Notwithstanding the questions left open about the agencies' claim that the notice must be posted, we have advised employers that they should comply with the agencies' request and post the new USDA/OSHA notice.

Given the very limited time and resources it takes to post the new notice, it is worth doing so to avoid drawing the ire of an OSHA inspector who may visit your site. It is simply not worth risking the issuance of a citation when you can easily comply with this request.

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