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OSHA head nominee Scott Mugno underscores teamwork during Senate confirmation hearing

Scott Mugno, at press time President Donald Trump's nominee to lead OSHA as assistant secretary of labor, emphasized the importance of teamwork during his Dec. 5 confirmation hearing before the Senate Health, Education, Labor and Pensions Committee.

On Dec. 13, the HELP Committee sent Mugno's nomination to the full Senate for confirmation. That vote had not been scheduled at press time.

"If confirmed, I will work very hard every day side by side with the best safety professionals at America's ultimate safety department," Mugno said during the Dec. 5 hearing. "The discussions or debates on how to reach that goal (of safety) can, at times, lead some to believe one side or another doesn't believe in the goal. Nothing could be further from the truth."

Mugno is the vice president of safety, sustainability and vehicle maintenance at FedEx Ground, where he has worked since August 1994, joining the company as a senior attorney. From February 2000 to December 2011, he was managing director of corporate safety, health



and fire prevention until his promotion to vice president. Mugno also served as OSHA subcommittee chairman for the U.S. Chamber of Commerce, a noted regulatory opponent.

If confirmed as OSHA administrator, Mugno would take over from Loren Sweatt, who has served as acting assistant secretary of labor since July 24. Sweatt is OSHA's deputy assistant secretary of labor.

The two-and-a-half-hour hearing shed no light on Mugno's positions on regulations such as injury/illness reporting or silica. Sharing time with three other nominees, Mugno would not commit to changing OSHA's press release policy and did not give a firm answer

on whether the Department of Labor should avoid contracts with companies that are health and safety violators.

When asked by Sen. Johnny Isakson (R-GA) whether FedEx considered OSHA an enemy or friend, Mugno said, "I would always say that they were an ally. ... OSHA has much to bring to the table, as well. Granted, they have enforcement powers, which are needed in some cases for other actors."

Other members of the committee pointed to a 2006 *Business Insurance* report on a U.S. Chamber of Commerce event that quoted Mugno as saying, "We've got to free OSHA from its own statutory and regulatory handcuffs." The article also noted that he suggested some of the agency's regulations should have sunset provisions.

Mugno was not asked about those statements during the hearing, but Sen. Patty Murray (D-WA) brought up his opposition to OSHA's enhanced respirator standards in 1995 and to ergonomics standards in 2000. "The list goes on," Murray said, and then asked, "Can you

— article continues on p. 4

OSHA announces Top 10 most-cited violations for fiscal year 2017

A new entry emerged in the Top 10 list of OSHA's most frequently cited violations for fiscal year 2017, joining the ranks of a rarely altered field.

Assessing the addition of Fall Protection – Training Requirements (1926.503) at No. 9, Patrick Kapust, deputy director of OSHA's Directorate of Enforcement Programs, treated the matter with the same urgency reserved for the list's usual suspects.

"Many of these violations were specifically related to training requirements and ensuring that a training program for each employee who may be exposed to fall hazards is established," Kapust told *Safety+Health* magazine. "Often, these violations occurred in the roofing, framing and residential modeling industries.

We are concerned about the recent uptick in this category and urge employers to take the necessary measures to train employees on this competency."

The Top 10 list, submitted to *S+H* on Nov. 14, is as follows:

- 1. Fall Protection – General Requirements** (1926.501)
Total violations: 6,887
- 2. Hazard Communication** (1910.1200)
Total violations: 4,652
- 3. Scaffolding** (1926.451)
Total violations: 3,697
- 4. Respiratory Protection** (1910.134)
Total violations: 3,381
- 5. Lockout/Tagout** (1910.147)
Total violations: 3,131
- 6. Ladders** (1926.1053)
Total violations: 2,567
- 7. Powered Industrial Trucks** (1910.178)
Total violations: 2,349
- 8. Machine Guarding** (1910.212)
Total violations: 2,109
- 9. Fall Protection – Training Requirements** (1926.503)
Total violations: 1,724
- 10. Electrical – Wiring Methods** (1910.305)
Total violations: 1,530

For more in-depth coverage of the Top 10 list, including the top five subsections of each standard cited and a Q&A with Kapust, go to <http://sh-m.ag/2AfcgnV>.

OSHA ALLIANCES

The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to www.osha.gov/dcsp/alliances/index.html.

American Chemistry Council

Date of alliance: Sept. 13, 2017

OSHA and the American Chemistry Council will work together to provide members, occupational physicians, stakeholders and others within the polyurethanes value chain with information, guidance and access to training resources that will help them protect the health and safety of workers. They will do so particularly by illustrating methods for reducing and preventing exposure to aliphatic and aromatic diisocyanates; providing a better understanding of the health issues, routes of exposure and medical surveillance/clinical evaluation techniques related to diisocyanates; and understanding the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act.

The goals of the alliance include:

Raising awareness of OSHA's rule-making and enforcement initiatives:

- To share information on OSHA's National Emphasis Programs, the regulatory agenda and opportunities to participate in the rulemaking process.
- To share information on occupational safety and health laws, standards, and guidance resources.

Training and education:

- To conduct effective web-based training to educate employers and workers on safe use and handling when working with diisocyanates, specifically potential routes of exposure to downstream users that will be shared with

OSHA personnel and other industry safety and health professionals and incorporate learning evaluations to ensure training is effective.

Outreach and communication:

- To develop information on the recognition and prevention of workplace hazards by developing medical surveillance guidance and workplace guidance documents on the safe use and handling to prevent both inhalation and dermal exposure when working with diisocyanates. Additionally, to develop ways of communicating such information to employers and workers.

Excerpted from www.osha.gov/dcsp/alliances/acc/acc.html.

In Other News...

New OSHA fact sheets: shipboard pedestal crane safety, safe baggage handling at cruise ship terminals

OSHA recently released two fact sheets.

One (available at www.osha.gov/Publications/OSHA3913.pdf) is intended to help protect workers from hazards associated with shipboard pedestal cranes.

Common on commercial fishing vessels, pedestal cranes move and load materials and catches. When a pedestal crane's components, or its operation, fail, injuries and fatalities can occur. Failure can result from inadequate maintenance, unapproved modifications, improper use, lack of training, and improper inspections, the sheet states. Proper training, regular inspections and working within manufacturers' guidelines can reduce the risks.

Another fact sheet (available at www.osha.gov/Publications/OSHA3924.pdf) is intended to protect longshore workers who handle baggage at cruise ship terminals.

Porters and baggage handlers frequently bend, kneel, crouch or crawl in unnatural positions while working, making them susceptible to injuries, the fact sheet states. The resource encourages employers to promote safe lifting techniques.

Tips include:

- Perform gentle range-of-motion exercises before shifts to warm up muscles.
- Don't assume an object's weight based on its size; check for tags indicating heavy baggage and request help if an object is too heavy.
- Hold bags close and centered to your body while keeping a baggage cart or cage nearby to limit the lifting process.
- Lift slowly and steadily, using your legs instead of your back.
- Turn with your feet while lifting. Don't twist your waist.
- Don't stack baggage above shoulder height.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Walking-Working Surfaces and Fall Protection Systems

Standard: 29 CFR part 1910, subparts D and I

Date of response: Aug. 18, 2017

(continued from December 2017)

Where employers already have provided training that meets the final rule, they may not need to provide initial training to those workers. In the preamble, OSHA stated: "[a]n employer whose workers have received training, either from the employer or another employer, that meets the requirements of final 1910.30(a) will not need to provide additional initial training" (81 FR 82639). As discussed, [National Association of Tower Erectors] employers have trained the vast majority of their workers on fall hazards and fall protection equipment under the Telecommunications and Construction Fall Protection Standards. OSHA believes that training complies with the final rule. Therefore, NATE employers will not need to provide initial training to most of their workers. For the remaining workers (i.e., new workers, workers whose previous training did not meet the final rule), OSHA believes providing training will not pose significant difficulties (81 FR 82639). In the preamble, OSHA explained that giving employers six months (until May 17, 2017) to provide training to the remaining workers would allow them to work the training into regular training schedules, which NATE said their employers have (81 FR 82639). Therefore, OSHA does not believe it is necessary to extend the deadline for NATE employers to train workers on fall hazards and fall protection equipment.

NATE also requests that OSHA extend the deadline to provide fall protection equipment, stating that additional time is necessary because some employers that perform maintenance on antennas on commercial building roofs need to analyze fall hazards before they can provide fall protection. OSHA believes extending the deadline for NATE employers to provide fall protection is not appropriate or warranted for two reasons. First, since 1971, when OSHA adopted the old general industry fall protection standard, all general industry employers have been required to protect workers from falling off elevated, unprotected edges and surfaces. Even before OSHA published the final rule, NATE employers already were required to provide fall protection for workers exposed to fall hazards while maintaining antennas on commercial building roofs. The final rule did not change that requirement; and NATE employers should be providing fall protection for those maintenance workers.

Second, OSHA does not believe that NATE employers need additional time to analyze fall hazards on commercial building roofs. The final rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) Standards (29 CFR part 1910, subparts D and I) adopts the construction standard's flexible approach for controlling fall hazards, which allows employers to select from a range of accepted conventional fall protection systems the one that will work best in a particular situation.

Loren Sweatt

Deputy Assistant Secretary, OSHA

Excerpted from www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=31373.

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name a single rule proposed by OSHA that during your career you support in order to enhance worker safety?”

Mugno did not answer, but noted that although he and the U.S. Chamber of Commerce had crafted a number of comments opposing certain regulations, they did not submit comments on other regulations, indicating they had no objections.

Sen. Susan Collins (R-ME) asked Mugno about another comment he made at the same 2006 U.S. Chamber of Commerce event on who bears the responsibility for workplace safety.

“We’ve got to look harder at the employee,” Mugno was quoted as saying at the event. The *Business Insurance* report noted that he said workers need to deal with health problems such as obesity. Collins said, “Some people have taken that comment out of context to suggest that you were attributing employee injuries to activities that were off the worksite.”

Mugno clarified: “If safety was a sport, it’s a team sport, and everybody involved in trying to improve safety and health in the workplace has to have skin in the game, if you will,” he said, pointing to the use of health and wellness programs.

Echoing Secretary of Labor R. Alexander Acosta, Mugno touted the potential expansion of the Voluntary

Protection Programs and “other compliance assistance programs.” Mugno said that those “should not be viewed as mutually exclusive from the other tools in the toolbox, such as enforcement and standard-setting.”

Like Acosta, Mugno said he would help pursue criminal charges against employers “if the circumstances are right, the elements are met and (after) consultation with the solicitor’s office at the Department of Justice.”

In keeping with the teamwork theme, Mugno acknowledged the role labor unions have played in safety. He said he and his FedEx safety team worked with the flight safety department and the pilots’ union on hazardous materials issues and on disease prevention during the H1N1 flu pandemic in 2009.

In a note not found in his other biographies, Mugno said he was a union shop steward at a Macy’s department store in New York City when he was a college student in the late 1970s.

He went on to attend law school at Washburn University in Kansas and later served in the U.S. Army’s Judge Advocate General’s Corps for nearly six years. “And yes, I wrote grievances, and some of them for safety,” he said of his time at Macy’s.

To watch the confirmation hearing, go to <http://sh-m.ag/2BIUVmY>.