



U. S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

December 17, 2015

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: Sally Quillian Yates 
Deputy Attorney General

SUBJECT: Prosecutions of Worker Safety Violations

The Department is committed to ensuring every American's right to a safe workplace. Currently, an average day in the United States is marked by 13 workplace fatalities, nearly 150 deaths from occupational diseases, and about 9,000 nonfatal injuries and illnesses. The Occupational Safety and Health Act of 1970 ("OSH Act") provides criminal sanctions for three types of conduct impacting worker safety: (1) willfully violating a specific standard, and thus causing the death of an employee; (2) giving advance notice of OSHA inspection activity; and (3) falsification of documents filed or required to be maintained under the OSH Act. Each of these is a misdemeanor punishable by a fine of no more than \$10,000 and/or imprisonment for no more than 6 months. Perhaps because these penalties have never been increased, there are only a handful of reported criminal prosecutions under the OSH Act each year (*e.g.*, three in 2013).

Prosecutors can make enforcement meaningful by charging other serious offenses that often occur in association with OSH Act violations – including false statements, obstruction of justice, witness tampering, conspiracy, and environmental and endangerment crimes. With penalties ranging from 5 to 20 years' incarceration, plus significant fines, these felony provisions provide additional important tools to deter and punish workplace safety crimes.

The Environmental Crimes Section (ECS) of the Environment and Natural Resources Division (ENRD) has worked with the Department of Labor (DOL) over the past decade to aggressively prosecute numerous worker safety cases, developing an expertise in worker safety enforcement. ECS has also trained hundreds of OSH Act inspectors to recognize and document Title 18 offenses. To further our ability to deter worker safety crimes, the Attorney General's Advisory Committee recently voted to approve amendments to the U.S. Attorneys' Manual (USAM) that would transfer the responsibility shared with the U.S. Attorneys' Offices for criminal worker safety prosecutions from the Criminal Division's Fraud Section to ENRD's

ECS. Those USAM changes specifically address criminal prosecutions under the OSH Act, the Mine Safety Act, 30 U.S.C. § 801 et seq., the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1801 et seq., and the Atomic Energy Act, 42 U.S.C. § 2272 et seq. The revisions to the USAM can be found at: <http://www.justice.gov/usam/usam-5-11000-environmental-crimes#5-11.101>. The changes are intended to allow ECS to provide support and resources to the U.S. Attorneys' Offices in this important area.

Earlier today, in order to enhance coordination between the Department of Justice (DOJ) and DOL, I executed a Memorandum of Understanding with the Deputy Secretary of DOL. It is available at <http://www.justice.gov/enrd/worker-endangerment>. The Memorandum of Understanding establishes a process and framework for notification, consultation and coordination between DOJ and DOL to aid both agencies in more effectively implementing our national workplace statutes.

In the next few weeks, ECS will be providing to you the name of a designated Criminal Coordinator from the Department of Labor. I encourage you to work with this person to increase the frequency and effectiveness of criminal prosecutions of worker safety violations in your District. Appointing an attorney in your office to engage regularly with the designated Criminal Coordinator and relevant enforcement personnel will help to identify matters appropriate for investigation and prosecution. ECS stands ready to provide assistance at your request, and, now that it has responsibility for the worker safety statutes, will be engaging in outreach to the U.S. Attorney community to offer support in this area. U.S. Attorneys' Offices are encouraged to consider criminal referrals from DOL and to work with ECS in using all tools available under the U.S. Code to build strong workplace safety cases.

cc: Acting Associate Attorney General
Heads of Litigating Components
Director, Executive Office for United States Attorneys