

JUSTICE NEWS

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The Departments of Justice and Labor Announce Expansion of Worker Endangerment Initiative to Address Environmental and Worker Safety Violations

Justice Department's Environment and Natural Resources Division Will Work with the Department of Labor and U.S. Attorneys for Broader Look at Environmental and Workplace Safety Crimes

In an effort to prevent and deter crimes that put the lives and the health of workers at risk, the Departments of Justice and Labor announced today a plan to more effectively prosecute such crimes. Under the new plan, the Justice Department's Environment and Natural Resources Division and the U.S. Attorneys' Offices will work with the Department of Labor's Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA) and Wage and Hour Division (WHD) to investigate and prosecute worker endangerment violations.

"On an average day in America, 13 workers die on the job, thousands are injured and 150 succumb to diseases they obtained from exposure to carcinogens and other toxic and hazardous substances while they worked," said Deputy Attorney General Sally Quillian Yates. "Given the troubling statistics on workplace deaths and injuries, the Department of Justice is redoubling its efforts to hold accountable those who unlawfully jeopardize workers' health and safety."

"Safety and security in the workplace are a shared commitment. Workplace injuries and illnesses cause an enormous amount of physical, financial and emotional hardship for workers and their families and underscore the urgent need for employers to provide a safe workplace for their employees," said Department of Labor Deputy Secretary Chris Lu. "Today's announcement demonstrates a renewed commitment by both the Department of Labor and the Department of Justice to utilize criminal prosecution as an enforcement tool to protect the health and safety of workers."

Starting last year, the Departments of Justice and Labor began meetings to explore a joint effort to increase the frequency and effectiveness of criminal prosecutions of worker endangerment violations. This culminated in a decision to consolidate the authorities to pursue worker safety statutes within the Department of Justice's Environment and Natural Resource Division's Environmental Crimes Section. In a memo sent today to all 93 U.S. Attorneys across the country, Deputy Attorney General Yates urged federal prosecutors to work with the Environmental Crimes Section in pursuing worker endangerment violations.

The worker safety statutes generally provide for only misdemeanor penalties. However, prosecutors have now been encouraged to consider utilizing Title 18 and environmental offenses, which often occur in conjunction with worker safety crimes, to enhance penalties and increase deterrence. Statutes included in this plan are the Occupational Safety and Health Act (OSH Act), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and the Mine Safety and Health Act (MINE Act).

"We have seen that employers who are willing to cut corners on worker safety laws to maximize production and profit, will also turn a blind eye to environmental laws," said Assistant Attorney General John C. Cruden for the Justice Department's Environment and Natural Resources Division. "Working with our partners in the Department of Labor and law enforcement, we will remove the profit from these crimes by vigorously prosecuting employers who break safety and environmental laws at the expense of American workers."

"Every worker has the right to come home safely. While most employers try to do the right thing, we know that strong sanctions are the best tool to ensure that low road employers comply with the law and protect workers lives," said Assistant Secretary for Occupational Safety and Health Dr. David Michaels. "More frequent and effective prosecution of these crimes will send a strong message to those employers who fail to provide a safe workplace for their employees. We look forward to working with the Environment and Natural Resources Division to enforce these life-saving rules when employers violate workplace safety, workers' health and environmental regulations."

In addition to prosecuting environmental crimes, the Environment and Natural Resources Division has also been strengthening its efforts to pursue civil cases that involve worker safety violations under statutes such as the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act and the Toxic Substances Control Act. Violations of a number of provisions under these statutes can have a direct impact on workers tasked with handling dangerous chemicals and other materials, cleaning up spills and responding to hazardous releases.

For more information, visit: www.justice.gov/enrd/worker-endangerment/

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Worker Endangerment

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The Deputy Attorney General

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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

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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