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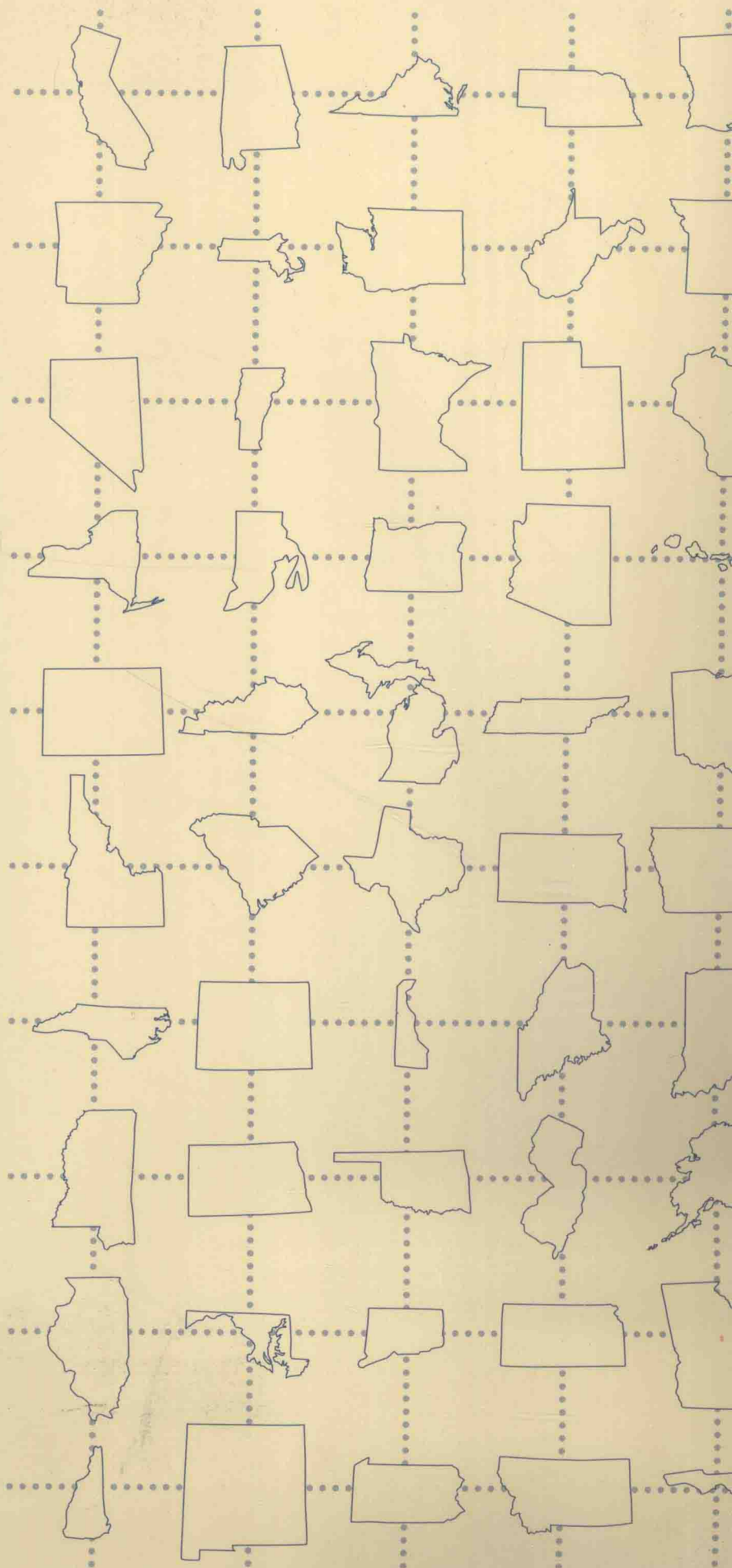
WORKPLACE

SAFETY

REGULATION

JOHN F.
BUCKLEY

NADINE E.
RODDY



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Law & Business

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State by State Guide to Workplace Safety Regulation

2010 Edition

by John F. Buckley IV and Nadine E. Roddy

State by State Guide to Workplace Safety Regulation is an authoritative reference to help human resources professionals and workplace safety officers develop and implement workplace safety policies and ensure that their company's workplace is in compliance with state laws and regulations.

Highlights of the 2010 Edition

The 2010 Edition includes coverage of the following developments and requirements:

- Work-related fatalities—new OSHA Guidelines to help reduce motor vehicle crashes involving employees. Roadway accidents remained the leading cause of work-related deaths in 2007. Down by 3 percent from the preceding year, the 1,311 fatal roadway incidents in 2007 nevertheless accounted for approximately one in four fatalities, according to the Bureau of Labor Statistics' (BLS's) Census of Fatal Occupational Injuries.
- Fire safety and workplace smoking—new state laws requiring the sale of “fire-safe” cigarettes only. This nationwide initiative is spearheaded by the Coalition for Fire-Safe Cigarettes, coordinated by the National Fire Protection Association (NFPA). Over 35 states have now enacted this legislation. Also covered are new, stricter workplace smoking laws enacted in several states, including Colorado, Illinois, New Jersey, Louisiana, and Virginia.
- OSHA standards and rules—a recently clarified final rule on employer-paid personal protective equipment (PPE). All PPE (with few exceptions) must now be provided by the employer at no cost to the employee. The exceptions are for ordinary safety-toed footwear, ordinary prescription safety eyewear, logging boots, and ordinary clothing and weather-related gear. Also covered is a proposed rule on Cranes and Derricks in Construction, which addresses the key hazards associated with the use of such devices, and an accompanying National Crane Safety Initiative.
- Workplace violence—proposed state laws intended to counteract workplace bullying. Legislative efforts to make workplace bullying illegal have begun in a several states, including Connecticut, Massachusetts, Montana, Nevada, New Jersey, New York, Oklahoma, Utah, Vermont, and Washington. Supported by anti-bullying organizations such as the Workplace Bullying Institute, bills such as New Jersey's proposed Healthy Workplace Act have been introduced or are pending in the legislative sessions of these states. Also covered is a federal appellate court case in which an Oklahoma



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gun rights law was found not to be preempted by the OSH Act's General Duty Clause. [Ramsey Winch, Inc. v. Henry, 555 F.3d 1199 (10th Cir. 2009)]

- Heat illness standard—two new state standards addressing heat illness prevention. California adopted the nation's first permanent Heat Illness Prevention Standard in June 2006. The standard requires all outdoor workplaces to provide water (at least a quart per hour), shade (or for non-agricultural operations an alternative form of cooling), and employee training. Washington adopted a similar permanent standard in July 2008 after issuing emergency standards in the summers of 2006 and 2007.
- Combustible dust—a new OSHA Safety and Health Instruction that details the agency's policies and procedures for inspecting workplaces that handle combustible dust. Together with a new National Emphasis Program on combustible dust, the Instruction is intended to raise awareness of the fire and explosion hazards that may exist at facilities where combustible dust accumulates.
- New hospital eTool—A new and improved OSHA eTool designed for the healthcare industry. Both employers and employees stand to benefit from the new sonography and updated surgical modules featured in the Hospital eTool available on OSHA's website. The new sonography module provides guidance on how sonographers can reduce their risk of musculoskeletal disorders. The updated surgical module features current information on bloodborne pathogens, waste anesthetic gases, laser safety, and other topics related to workplace safety and health in surgical suites.
- Safeguarding equipment—a revised OSHA guide entitled *Safeguarding Equipment and Protecting Employees from Amputations* to assist employers in preventing workplace injuries that could necessitate amputation of a body part. This revised guide ties directly to OSHA's National Emphasis Program on Amputations.
- Ergonomics—new OSHA Ergonomics Guidelines for the shipyard industry. OSHA plans to develop guidelines for additional industries with the use of a standard protocol, *OSHA Protocol for Developing Industry-Specific and Task-Specific Ergonomics Guidelines*. Also covered is a recent decision of the Washington Supreme Court holding that the 2003 ballot repeal of the state's ergonomics regulation had no effect on the state Department of Labor's authority to enforce ergonomics concerns through the general duty clause of the state OSH Act. [SuperValu, Inc. v. Department of Labor and Industries, 158 Wash. 2d 422, 144 P.3d 1160 (2006) (en banc)]
- Influenza—new OSHA Guidance Documents to help employers prepare for a possible influenza pandemic. Developed in coordination with the Department of Health and Human Services (HHS), the *Guidance on Preparing Workplaces for an Influenza Pandemic* provides general guidance for all types of workplaces, describes the differences between seasonal, avian, and pandemic influenza, and presents information on the nature of a potential pandemic, how such a virus is likely to spread, and how exposure is likely to occur. The *Pandemic Influenza Preparedness and Response Guidance for Healthcare Workers and Healthcare Employers* provides specific guidance for the health care industry.
- *Emergency response*—OSHA's updated Hurricane Response and Recovery eMatrix, a Web-based tool to educate employers and employees on addressing the most common and significant hazards they may encounter during hurricane response recovery work.

Also covered is an OSHA Guidance Document to assist workers and employers in determining whether an activity is considered an “emergency response” activity under the agency’s Hazardous Waste Operations and Emergency Response (HAZWOPER) standard.

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About the Authors

The *2010 State by State Guide to Workplace Safety Regulation* was prepared by John F. Buckley IV and Nadine E. Roddy with the assistance of the attorneys of the National Legal Research Group. Founded in 1969, the National Legal Research Group has provided consulting and research services to attorneys on more than 100,000 cases.

JOHN F. BUCKLEY IV is a senior attorney on the Public Law team of the National Legal Research Group, where he specializes in civil rights, employment discrimination, and local and state government law; in this capacity, he has advised attorneys throughout the country on legal issues related to employment law. Mr. Buckley is editor and contributing author of *State by State Guide to Human Resources Law* and author of numerous titles published by Aspen Publishers, including *Multistate Payroll Guide*, *Multistate Guide to Benefits Law*, *Equal Employment Opportunity Compliance Guide*, and *ERISA Law Answer Book*. He is the coauthor of the second edition of West's *Defense of Equal Employment Claims* and was the supplement editor of the first edition of that treatise from 1988 to 1993. Mr. Buckley is a member of the Society for Human Resource Management.

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Ms. Roddy received her B.A. from the College of Wooster in Ohio in 1976 and her J.D. from the College of William and Mary in Virginia in 1982, where she was a member of the Law Review.

This book is dedicated to Howard and Patricia Anderson.

—*John F. Buckley IV*

Preface

State by State Guide to Workplace Safety Regulation is an authoritative reference to help human resources professionals and workplace safety officers comply with state workplace safety laws and regulations. It emphasizes practical methods of developing and implementing workplace safety policies and offers guidance on how to ensure that the workplace is in compliance with state laws and regulations.

The *Guide* organizes essential information in a ready reference form—information necessary to ensure compliance with workplace safety regulations applicable to a broad range of businesses. Charts make it easy to locate information concerning one state's treatment of a particular issue or to compare the treatment required by several different states—all on the same chart. Each chart also provides citations with which to access further information about such current concerns as:

- Required written safety plans
- Required emergency action plans
- Regulation of smoking in the workplace
- Elevator safety requirements
- Illumination levels required for different locations and tasks
- Safety equipment required for employees
- Employment of minors
- Drug testing requirements in various industries
- Whistle-blowing protections for employees
- Penalties for noncompliance and retaliation violations

Introductory text sections in each chapter provide context and detailed discussion of the most important workplace safety issues. Comprehensive exhibits and sample policies can be used to create required or recommended workplace safety guidelines or to update existing policies.

Throughout *State by State Guide to Workplace Safety Regulation* acronyms are used for common terms and laws. Following is a list of some of the most frequently used acronyms:

ADA	Americans with Disabilities Act
ANSI	American National Standards Institute
DOL	Department of Labor
HCP	Health Care Provider
IAQ	Indoor Air Quality
MSD	Musculoskeletal Disorders
MSHA	Mine Safety and Health Act
NIOSH	National Institute for Occupational Safety and Health
OSHA	Occupational Safety and Health Administration
OSH Act	Occupational Safety and Health Act
OSHRC	Occupational Safety and Health Review Commission

OSHSPA	Occupational Safety and Health State Plan Association
PEL	Permissible Exposure Limits
RMI	Repetitive Motion Injury
WDLI	Washington Department of Labor and Industries
WMSD	Work-related Musculoskeletal Disorders

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