

WORKPLACE SAFETY ISSUE BRIEF

Background

Modern workplace safety was greatly enhanced with the passage of the Occupational Safety and Health Act (“OSH Act”) in 1970. The OSH Act created the [Occupational Safety and Health Administration](#) (“OSHA”) to set workplace health and safety standards. The OSH Act also provided OSHA and states with enforcement powers to protect the health and safety of workers. Its passage [represents](#) almost a century of efforts by organized labor to protect workers from dangerous machinery and exposure to hazardous chemicals, both of which were endemic to the industrial revolution. Over time, some states have enacted their [own statutory schemes](#) to protect workplace safety and operate in concert with the [OSH Act](#).

[Twenty-two states](#) have their own occupational safety and health plans approved by OSHA. These states are: AK, AZ, CA, HI, IN, IA, KY, MD, MI, MN, NV, NM, NC, OR, PR, SC, TN, UT, VT, VA, WA, and WY. The scope of these state statutes vary. In some states, such as Maine, New Jersey, Illinois and New York, the state plans [only cover public workers](#). Other states like South Carolina, Connecticut, and Indiana mirror federal standards. [North Carolina](#) and [Vermont](#) have some of their own practices and standards, which still utilize the federal law but also add a layer of additional protections. Once OSHA approves the state plan, it relinquishes jurisdiction over workplace health and safety matters to that respective state.

The OSH Act [does not apply](#) to self-employed individuals, immediate family members, or farm employers. The Act’s exclusion of self-employed workers highlights the ongoing risks of employee misclassification. Misclassified employees may be considered self-employed and not be perceived as being protected by the workplace safety standards required by the OSH Act.

Role of State Attorneys General

State attorneys general (AGs) play an important role in enforcing state laws that impact workplace safety. They may provide advice to their respective state departments of labor charged with administering and enforcing companion OSH Acts. Some state AGs can bring criminal charges for willful violations of workplace safety laws. Examples of such states include [Oregon](#) and [Minnesota](#). In [Illinois](#), the Attorney General (AG) has authority to seek civil penalties. Further, AGs can use their bully pulpit to bring awareness to employers, employees, and the general public of workplace safety laws by releasing guidance and advisories, filing amicus briefs in pending cases, and submitting comments to federal agencies as they propose new rules related to workers’ rights.

In addition to specific authorization, state AGs can utilize general criminal statutes and its *parens patriae* authority (which allows them to take legal action on behalf of residents) to protect workers from unsafe conditions. For example, a former Michigan AG [prosecuted](#) a supervisor for involuntary manslaughter when they exposed an employee to carbon monoxide intoxication while operating a defective motor vehicle. See *People v. Hegedus*, 432 Mich. 598 (1989).

Examples of State Attorneys General Actions

Below are some recent actions that AGs have taken to protect health and safety in the workplace:

- New York AG Letitia James [sued](#) Amazon in 2021 for its failure to undertake policies consistent with the workplace guidelines issued during the COVID crisis. In doing so, AG James relied upon the general common law, as codified in Labor Law § 200(1), for employers to provide a reasonably safe workplace.
- During the COVID crisis, AGs used their bully pulpits to provide helpful guidance to protect worker safety. Former Arizona AG Mark Brnovitch [issued](#) a press release informing workers of their rights under their state's paid sick leave law. Former District of Columbia AG Karl Racine [held](#) a tele-town hall about workers' rights during COVID, and former Vermont AG TJ Donovan [issued](#) workplace guidance addressing COVID concerns that helped workers and employers navigate a range of issues.

As their respective state's chief law enforcement officers, state AGs also advocate for workplace safety by filing amicus briefs and advocating for federal government action, including urging federal regulators during rulemaking to protect the health and safety of laborers. Recent examples include:

- New Jersey AG Matthew Platkin [led](#) a coalition of 17 AGs in June 2022 to support a proposed OSHA rule that would increase transparency and public awareness of on the job dangers. The proposed rule would require employers to report more detailed information about workplace injuries. AGs from CA, CT, DE, DC, HI, IL, MD, MA, MI, MN, NV, NM, NY, OR, RI, and VT joined the letter of support.
- In January 2023, California AG Rob Bonta and Illinois AG Kwame Raoul [co-led](#) a coalition of 19 AGs in filing an amicus brief with the U.S. Court of Appeals for the Sixth Circuit to reject efforts to unwind legal precedent and protect OSHA's authority to protect workplace safety. The underlying lawsuit challenges OSHA's authority to promulgate occupation health and safety standards as exceeding its congressional mandate. AGs from CO, CT, DE, DC, HI, ME, MD, MA, MI, MN, NJ, NM, NY, OR, PA, RI, and WA joined as well.

- Massachusetts AG Andrea Campbell, along with AGs from CA, IL, MD, NJ, NY, and PA, [called](#) upon OSHA in February 2023 to issue emergency standards to protect workers from excessive heat during the summer months while OSHA continues its work on a final regulation. The proposed emergency standard would take effect when the heat index reaches 80 degrees. The proposed emergency standards would require employers to provide access to water, shade or cool areas, rest breaks, and temperature and workload monitoring.

The Leadership Center for Attorney General Studies is a non-partisan organization dedicated to educating the public about the important role state attorneys general play in addressing pressing issues, enforcing laws, and bringing about change.