MSHA Updates Guidance on Workplace Examination Standard

Monday, October 8, 2018

On September 28, 2018, the Mine Safety and Health Administration (MSHA) posted important updates to its enforcement guidance on the new final rule on Examinations of Working Places in Metal and Nonmetal Mines. The new workplace examination rule technically went into effect on June 2, 2018, but MSHA delayed enforcement of the rule until October 1, 2018.

Since the rulemaking began, MSHA has been providing mine operators with information on how the rule may be applied in mine inspections. The agency has been refining and adding to that guidance over time. Recently, MSHA issued critical new updates to its frequently asked questions (FAQ) on the rule.

Agent of the Operator

The latest guidance includes an important clarification on whether conducting a workplace examination will render someone an agent of the company and therefore subject to potential individual civil penalties under Section 110(c) of the Federal Mine Safety and Health Act. This is significant because there have been instances in which inspectors suggested to hourly miners that they are agents of the operator if they do a workplace examination. This has been causing a lot of confusion and needless concern.

The agency has stated clearly in the rulemaking record that doing a workplace examination does not impose agent status on an hourly miner. An earlier version of the FAQs was less clear on this point.

MSHA has now issued a more definitively worded answer to one of its FAQs, stating that “conducting a workplace examination in and of itself does not make a miner an agent of the operator.” This should take care of this issue, and operators that hear inspectors saying otherwise might want to direct them to this document.

Contractor Workplace Examinations and Examination Record

The FAQs updates are less clear in how they address workplace examinations in relation to contractors working on mine property. Regarding the question of whether a contractor and production operator must both examine the same working place if they each have employees in the same area (also known as “overlapping examinations”), the agency seems to be leaving open the possibility that a contractor’s workplace examination for an area will suffice for the production operator’s work in the area, and vice versa—but this is not entirely clear. The FAQ only goes so far as to state, that “production operators and contractors may arrange any number of ways to ensure that required workplace exams are completed.”

Again, while it is not entirely clear, MSHA’s new guidance does seem to place the burden on the production operator to ensure that its contractor’s workplace examination records are available to MSHA inspectors or miners’ representatives after the contractor is no longer working at the mine. The FAQs states that contractor examination records must be available at the mine and that this can be accomplished by the contractor providing
the production operator with a copy of the records.


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