



CONN  
MACIEL  
CAREY

# Unlock the Mysteries of OSHA's Lockout/Tagout Standard

---

February 20, 2018

---

**ERIC J. CONN**

Chair, OSHA Practice  
Washington, DC

**AARON R. GELB**

OSHA/Employment Partner  
Chicago, IL

# Eric J. Conn

[econn@connmaciel.com](mailto:econn@connmaciel.com) / 202.909.2737

**ERIC J. CONN** is Chair of the OSHA • Workplace Safety Practice Group at **Conn Maciel Carey**, where he focuses his practice on all aspects of occupational safety & health law:

- Represents employers in inspections, investigations & enforcement actions involving OSHA, CSB, MSHA, & EPA
- Responds to and manages investigations of catastrophic industrial, construction, and manufacturing workplace accidents, including explosions and chemical releases
- Handles all aspects of OSHA litigation, from criminal prosecutions to appeals of citations
- Writes & speaks regularly on safety & health law issues
- Conducts safety training & compliance counseling

# Aaron R. Gelb

agelb@connmaciel.com / 202.909.2737

**AARON R. GELB** is a partner at **Conn Maciel Carey**, where he focuses his practice on all aspects of labor and employment law and occupational safety & health law:

- Litigates equal employment opportunity matters in federal and state courts
- Defends employers before the EEOC as well as fair employment agencies across the country
- Advises clients in relation to inspections, investigations, and enforcement actions involving fed OSHA and state OSH programs
- Manages the full range of litigation against OSHA

# Agenda

- Why it is Critical to Get LOTO Right
- Top 5 Most Common LOTO Mistakes
  1. Misunderstand Scope of Covered Activities/Hazards
  2. Forget Someone (Affected Employees, Group LOTO)
  3. Inadequate Machine-Specific Procedures
  4. Misapply the “Minor Servicing Exception”
  5. Misunderstand Periodic LOTO Inspections



CONN  
MACIEL  
CAREY

# Why it is Critical to Get Lockout / Tagout Right

# 5 Most Frequently Cited OSHA Standards

1. Fall Protection (Construction)

2. Hazard  
Communication

3. Scaffolding

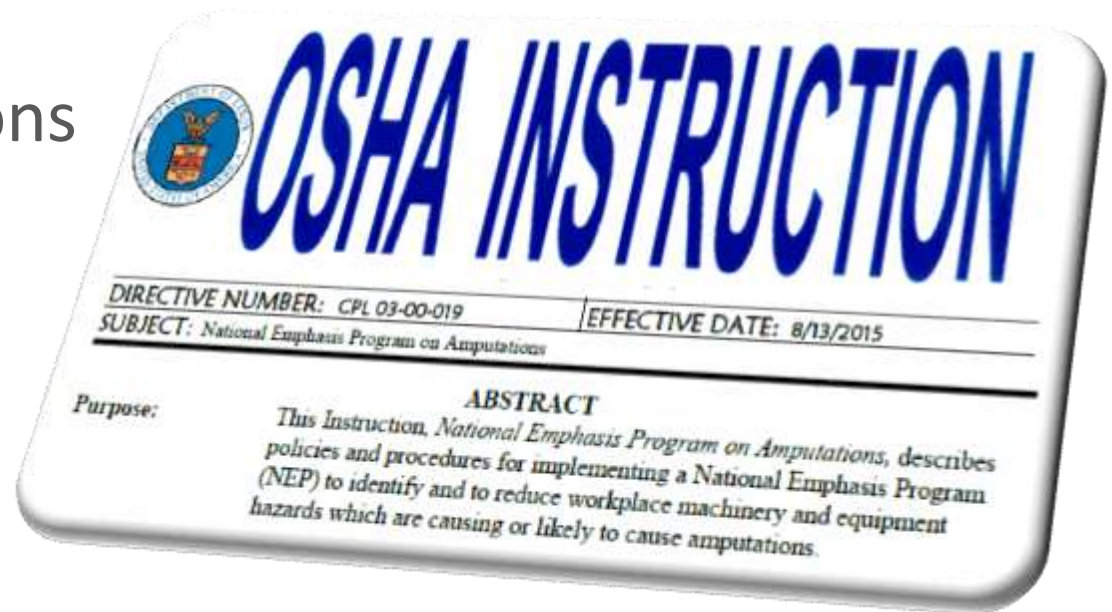
4. Respiratory  
Protection

**5. Control of Hazardous  
Energy (Lockout/Tagout)**



# Amputations National Emphasis Program

- Amputations NEP began in 2006
- Purpose: reduce machine and equipment hazards that cause amputations
- Focused on violations of Lockout/Tagout (1910.147) and Machine Guarding (1910.212, .213, .217, and .219)



## Amputations NEP Enforcement Data (FY17)

- 3,596 inspections in 2017 under Amputations NEP (more than 10% of all OSHA inspections)
- 2,775 of the inspections were in Manufacturing
- 1,247 triggered by employer reports to OSHA
- 2,800 resulted in citations (2,470 as Serious or worse)
- 7,850 Total Citation Items Issues
- 302 Willful and Repeat Violations
- \$55,669,243 in total penalties proposed



# SVEP - High Emphasis Hazard

Employers “demonstrate indifference to their OSH Act obligations” by committing:

*Egregious*  
enforcement  
action

1+ Willful,  
Repeat, or FTA  
citations related  
to a *Fatality* or  
*Catastrophe*

2+ Willful, Repeat,  
or FTA citations  
related to High  
Emphasis Hazards

3+ Willful,  
Repeat, or FTA  
*PSM* citations

## High Emphasis Hazard

- Falls
- **Amputations**
- Excavations
- Combustible Dust
- Oil & Gas
- Grain handling
- Lead
- Silica
- Primary Metals

## SVEP Cases by Qualifying Criteria

*Egregious*  
enforcement  
action

12%

1+ Willful,  
Repeat, or FTA  
citations related  
to a *Fatality* or  
*Catastrophe*

19%

2+ Willful,  
Repeat, or FTA  
citations related  
to *High Emphasis*  
*Hazards*

68%

3+ Willful,  
Repeat, or FTA  
citations under  
the *PSM*  
*Standard*

1%

# Consequences of “Qualifying” for SVEP



- Mandatory follow-up inspections
- Inspections at “related” facilities
- Enhanced settlement agreements
  - Corporate-wide abatement
  - 3<sup>rd</sup> party audits
- Public Shaming

# LOTO Criminal Cases

LOTO among most frequent OSH Act Criminal violations; e.g.:

## Behr Iron and Steel Inc. (Illinois)

- Employee entered shredder discharge pit to clean, when his arm got caught in a conveyor dragging him into the shredder.
- \$520K in fines to OSHA, \$350K in restitution to estate, 5 yrs probation

## Bumble Bee Tuna (California)

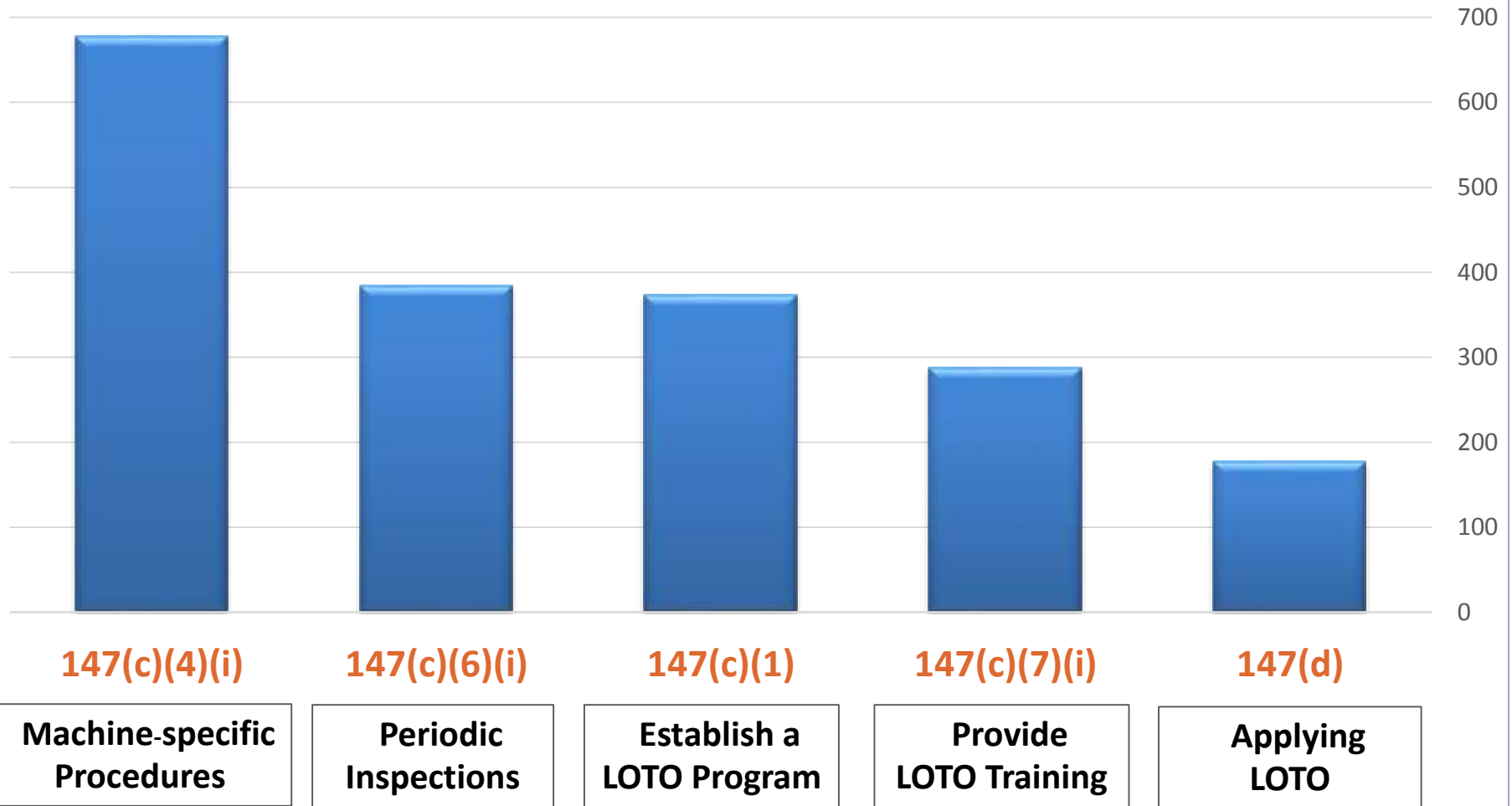
- Employee entered pressure cooker to perform maintenance, and was trapped inside when another employee began cooking process.
- \$3M to replace outdated ovens, \$1.5M in restitution to family, \$750K in fines and court costs, and \$750K to Environmental Enforcement Fund
- Personal liability for Safety Mgr. (felony, 3 yrs probation, \$19K fine)
- Personal liability for Ops. Dir. (misdemeanor, community service, \$11K fine)



CONN  
MACIEL  
CAREY

# The Top 5 Most Common Lockout/Tagout Mistakes

# Most Frequently Cited LOTO Standards





## Top 5 Most Common Lockout/Tagout Mistakes:

- 1. Misunderstand Scope of Covered Activities/Hazards**
2. Forget Someone - Affected Employees and Group LOTO
3. Inadequate Machine-Specific LOTO Procedures
4. Misapply the “Minor Servicing Exception”
5. Misunderstand Periodic Inspection Requirement

# Scope of Activities/Hazards Covered by LOTO

- 1910.147 applies to service & maintenance when a worker is exposed to ***unexpected energization, startup or release of hazardous energy***
- Includes “installing, setting-up, adjusting, inspecting, modifying, and maintaining machines or equipment ... including lubricating, cleaning or unjamming machines ... and making adjustments or tool changes....”
- Standard does NOT apply if:
  - The work task is ***normal operations***
  - Workers are NOT exposed to ***unexpected energization***
  - ***Machine guarding*** or standards effectively prevent exposure to hazards created by the unexpected energization
  - Work is part of a project covered by the ***Construction*** Standards



# Activities/Hazards Covered

- Employers often focus only on electrical hazards, to the exclusion of other hazardous energy also covered by LOTO
- Energy Sources to which LOTO applies:
  1. Electrical energy; AND
  2. Mechanical energy
  3. Thermal energy
  4. Hydraulic energy
  5. Pneumatic energy
  6. Potential energy from springs
  7. Gravity

# Don't Forget Other Standards

1910.147 is not the only standard that requires energy control:

- Permit Required Confined Space – 1910.146
- Powered Platforms and Manlifts – 1910.66
- Overhead and Gantry Cranes – 1910.179
- Mechanical Power Presses – 1910.217
- Electric Safety – 1910.269/1910.333
- Bakery Equipment – 1910.263
- Pulp and Paper – 1910.261
- Grain Standard – 1910.272
- PSM Standard – 1910.119
- Textiles – 1910.262
- Sawmills – 1910.265
- Derricks – 1910.181



# OSHA to Rewrite LOTO

- 1 rulemaking on Trump's Reg Agenda was moved to the "Final Rule Stage" - Standards Improvement Project IV
- Intent of SIP is to make non-controversial changes to confusing, conflicting, or outdated standards
- SIP IV proposes to remove language "*unexpected energization*" from the LOTO standard
- Revision intended to reverse holding of the *GM-Delco* decision interpreting "unexpected energization"

# LOTO – Unexpected Energization

- OSHA interpreted LOTO to apply if *“employee could be injured if equipment is energized”*
- 6<sup>th</sup> Cir. in *Reich v. GM Delco (1996)* disagreed:
  - Std. *“unambiguously renders LOTO inapplicable where employee is alerted or warned the machine is about to activate.”*
  - Applies *“where service employee is endangered by a machine that can startup w/out employee’s foreknowledge.”* **Not unexpected** if:
    - Alarm gives clear, audible, timely warning
    - Controls located so servicer is necessarily aware of start-up
    - Equipment unplugged & exclusively controlled by servicer
- For 20 yrs., employers relied on 6<sup>th</sup> Cir.’s interpretation

# Proposed LOTO Change

- OSHA now proposes to **remove term “unexpected energization”** from the LOTO standard (effectively overruling the holding in *Reich v. GM*)
- OSHA asserts this change is needed to:
  - Return scope of LOTO standard to OSHA's original intent
  - Ensure LOTO is used instead of less effective warning systems
  - Reduce burden on Inspectors who have needed to perform case- by-case assessments of warning schemes
  - *“Improve protection of workers, eliminate confusion re: applicability of the LOTO standard caused by the GM decision, and make the standard consistent w/...Shipyard Employment standard”*



## Top 5 Most Common Lockout/Tagout Mistakes:

1. Misunderstand Scope of Covered Activities/Hazards
- 2. Forgot Someone - “Affected” Employees & Groups**
3. Inadequate Machine-Specific LOTO Procedures
4. Misapply the “Minor Servicing Exception”
5. Misunderstand Periodic Inspection Requirement

# Train Affected Employees and Others

- Employers effectively train **authorized employees** (workers who service machines and apply energy control devices) to recognize applicable hazardous energy sources, types and magnitude of energy in the workplace, and methods to control it
- However, employers often forget to provide LOTO training to **affected employees** (who operate equipment being serviced) and **all other employees** (who may be present in areas where LOTO may be utilized), so they understand:
  - purpose and function of the energy control program and procedures
  - when energy control procedures are being used
  - prohibition against attempting to restart a machine that is locked out
- Temporary workers also often forgotten

# Group / Supervisor LOTO

- Employers do an effective job requiring *a* lockout device on a machine is serviced.
- However, when more 2+ employees service a machine, employers often forget to develop “Group Lockout” Procedures or to require use of a Group Lockout Device
- Although primary responsibility for a group/crew of employees must be w/ a single authorized employee, each authorized employee must affix his own personal lock to a group or gang lock device







## Top 5 Most Common Lockout/Tagout Mistakes:

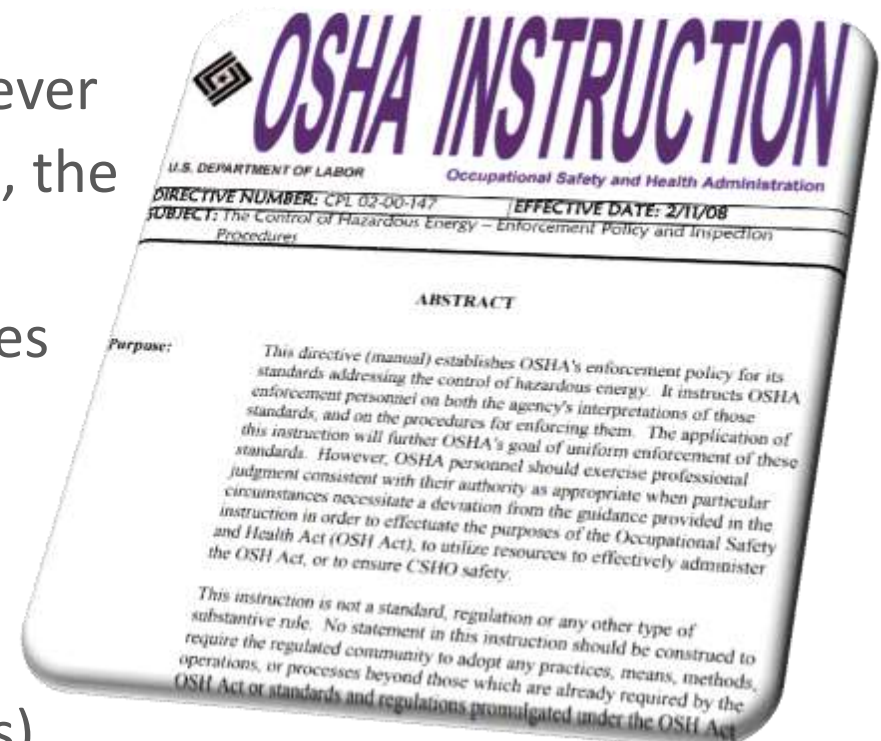
1. Misunderstand Scope of Covered Activities/Hazards
2. Forget Someone - Training “Affected” Employees
- 3. Inadequate Machine-Specific LOTO Procedures**
4. Misapply the “Minor Servicing Exception”
5. Misunderstand Periodic Inspection Requirement

# Machine-Specific LOTO Procedures

- Employers do a good job of developing a LOTO Policy and perhaps one common step-by-step LOTO Procedure
- However, employers often forget to develop a separate LOTO Procedure for each machine (or class of machine) it may service, or leave out key elements of the procedure. Procedures must:
  - Detail steps to shutdown, isolate, block, secure or relieve energy
  - ID specific steps for placement and removal of lockout devices
  - Include specific requirements to test to verify zero-energy state
  - Be machine-specific, unless:
    1. Multiple machines have the same hazardous energy sources; and
    2. They have the same/similar methods for controlling that energy

# Machine-Specific Procedures

- If a contractor performs task covered by LOTO, contractor and host must inform each other of their respective LOTO procedures
- However, if the host employer never services the equipment in-house, the host need not develop its own machine-specific LOTO procedures
- Even if you do not service a machine in-house, you still must develop a LOTO Program (b/c you still have affected employees)



## Sharing LOTO Procedures w/ Contractors

- When 3<sup>rd</sup> party contractors perform tasks covered by the LOTO Standard, they must adhere to Standard
- Contractors and host employers must inform each other of their respective LOTO procedures
- However, if the host employer will never service the equipment in-house, the host need not develop its own machine-specific LOTO procedures
- Host employer must ensure its employees understand and comply w/ restrictions of 3<sup>rd</sup> party's LOTO program



## Top 5 Most Common Lockout/Tagout Mistakes:

1. Misunderstand Scope of Covered Activities/Hazards
2. Forget Someone - Training “Affected” Employees
3. Inadequate Machine-Specific LOTO Procedures
- 4. Misapply the “Minor Servicing Exception”**
5. Misunderstand Periodic Inspection Requirement

# “Minor Servicing Exception”

Certain minor servicing activities, such as clearing package jams, minor tool changes, or equipment adjustments, if done during normal production operations, are exempted from LOTO if:

1. The task is performed during normal operations and is necessary to the production process
2. The activity is routine, repetitive and integral
3. The worker is protected from hazardous energy by effective alternative measures

# Minor Servicing Exception

- Routine, repetitive & integral
  - Routine: A regular and prescribed course of procedure and performed in accordance w/ established practices
  - Repetitive: Repeated regularly as part of the production process or cycle
  - Integral: must be essential to the production process



# Minor Servicing Exception

- Effective Alternative Measures
  - Employer must demonstrate its LOTO-substitute protective measures provide effective protection from hazardous energy
  - Specially designed tools, remote devices, interlocked barrier guards, local disconnects, or control switches under exclusive control of the employee performing the minor service
  - Measures must enable employee to safely perform minor service without being exposed to unexpected energization





## Top 5 Most Common Lockout/Tagout Mistakes:

1. Misunderstand Scope of Covered Activities/Hazards
2. Forget Someone - Training “Affected” Employees
3. Inadequate Machine-Specific LOTO Procedures
4. Misapply the “Minor Servicing Exception”

**5. Misunderstand Periodic Inspection Requirement**

# Periodic LOTO Procedure Inspection

- Employers must conduct periodic inspections of LOTO procedures *at least annually*
- The annual inspection must:
  1. be performed by an authorized employee (but not by the employee using the procedure being inspected)
  2. include a review b/n the inspector and the authorized employee of the responsibilities under the procedure
  3. be certified in a record that IDs the machine for which the procedure was reviewed, the date of the inspection, the employees included, and the person performing the inspection

# Periodic Inspection

- Employers often misinterpret the scope of the Periodic Inspection requirement.
- Standard says employers shall conduct an inspection of “the” energy control procedure, which leads many to assume this as a singular requirement – inspect 1 authorized employee implementing 1 LOTO procedure for 1 machine.
- But OSHA says, as a general rule, conduct an inspection of 1 (or more) authorized person(s) implementing each and every machine-specific LOTO procedure

# Periodic Inspections

- If you have dozens of pieces of equipment, and numerous LOTO authorized employees, how do you practically inspect each procedure and comply with 1910.147(c)(6)?
  - Employers may group procedures for like / similar machines for purposes of the annual inspection so long as:
    - Machines have the same/similar types of control measures
    - Inspections include representative set of authorized employees
    - Inspection results are reviewed with all authorized employees

# the **OSHA DEFENSE** report



CONN  
MACIEL  
CAREY

## • • • 2018 **OSHA WEBINAR** series • • •

OSHA Year in Review and Forecast

Tuesday, January 16th

Unlock the Mysteries of OSHA's Lockout/Tagout Standard

Tuesday, February 20th

OSHA's New Leadership Team

Tuesday, March 20th

OSHA's New Silica & Beryllium Rules

Tuesday, April 17th

OSHA's New E-Recordkeeping & Anti-Retaliation Rule

Tuesday, May 15th

Joint- and Multi-Employers, Contractors and Temps

Tuesday, June 5th

New Cal/OSHA Enforcement Issues

Tuesday, July 10th

Status and Future of OSHA's Policy of Public Shaming

Tuesday, August 21st

Walking/Working Surfaces Update

Tuesday, September 18th

Repeat, Willful & Egregious Violations

Tuesday, October 16th

Process Safety Update: OSHA PSM and EPA RMP

Tuesday, November 13th

OSHA and the ADA: How Two Labor Laws Can Align and Diverge

Tuesday, December 4th

## Check out our OSHA Blog:

the **OSHA DEFENSE** report



CONN  
MACIEL  
CAREY

[www.OSHADefenseReport.com](http://www.OSHADefenseReport.com)



# QUESTIONS?



# Contact Information



**ERIC J. CONN**

Chair, OSHA Practice Group  
Conn Maciel Carey LLP  
Washington, D.C.  
202.909.2737  
econn@connmaciel.com



**AARON R. GELB**

Partner, Employment & OSHA Groups  
Conn Maciel Carey LLP  
Chicago, IL  
312.868.0294  
agelb@connmaciel.com