

# PUBLICATION

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## OSHA Joins the EEOC in Taking a Close Look at the Construction Industry

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**Consistent with the Equal Employment Opportunity Commission's (EEOC) Strategic Enforcement Plan (SEP) published in January 2023, noting an increased focus on the construction industry as it relates to harassment and discrimination issues within the workplace and around hiring and the advancement of minorities, the Occupational Safety and Health Administration (OSHA) is following suit.**

At the end of March 2023, OSHA leaders announced another arrow in their quiver: OSHA has new authority through its Wage and Hour Division to issue certifications supporting applications for "U" nonimmigrant status and "T" nonimmigrant status visas. Reasoning that workers' immigration status, social inequalities, or differences in culture can cause them to fear retaliation for identifying unsafe work environments and criminal activity, like trafficking, murder, blackmail, extortion, and other serious crimes, Assistant Secretary of Labor for Occupational Safety and Health, Doug Parker [stated](#): "The Occupational Safety and Health Administration's top priority is to ensure workers are safe and can exercise their rights, regardless of their demographic or immigration status. A key part of that mission is expanding our work to combat workplace inequities that can create hazards and affect vulnerable workers who are likely to be exploited or victims of crimes. Our vision extends beyond setting standards, inspecting workplaces, and providing training. Becoming a visa certifying agency gives us one more tool in our wide-ranging effort to better protect workers and their rights on the job." And the construction industry will be closely scrutinized. For example, [OSHA reports](#) that, in 2021, one out of every six cases of human trafficking in the United States involved labor trafficking with the largest share of trafficked adults working in the domestic, agricultural, and construction industries.

The construction industry has long been identified on OSHA's Strategic Plan as a "high hazard industry" warranting nationwide attention and effort to help reduce occupational injuries and illnesses. Construction workers face multiple, potentially dangerous activities and situations, like falls, unguarded machinery, being hit by heavy construction equipment, electrocutions, silica dust, and asbestos. OSHA's authority to support applications for "U" nonimmigrant status and "T" nonimmigrant status visas will work hand-in-hand with its goal of creating safer work and project sites by encouraging people OSHA believes have historically been ignored to use their voices in identifying unsafe work environments. Assistant Secretary Parker commented in September 2022 that "the rate of suicide for construction workers is four times higher than the general population." He pointed to inconsistent work opportunities, the transitory and seasonal nature of construction work, demanding schedules, and work-related injuries as significant risk factors unique to the construction industry.

Noting that immigration status can be used as a threat to keep workers quiet or as retaliation if they share their concerns, under this new initiative, OSHA also plans to continue its efforts to improve workplace safety by offering some protection to those workers who historically may have kept quiet and kept working. On May 10, 2023, OSHA will hold a [virtual meeting](#) to hear public comments and suggestions about ways to improve its outreach and training programs that support the federal whistleblower laws that OSHA enforces. OSHA is looking for ways to improve its whistleblower website, the materials and information it makes publicly available, the training and presentations it offers, and its engagement with people for whom the whistleblower program is designed to benefit.

## Key Takeaways

With the attention that OSHA and the EEOC will be paying to the construction industry, we recommend that you confirm what regulations apply to your workplace and then review and renew your compliance procedures, training programs, and internal audit procedures. We also recommend that you anticipate and prepare for onsite inspections by OSHA, the EEOC, or the state government equivalents. These effective and preventive measures help reduce the chances that you will face liability and otherwise help mitigate the consequences if you do.

If you have any questions regarding OSHA and the EEOC within the construction industry, please reach out to [Cameron Hill](#) or any member of Baker Donelson's [Construction Group](#).