Whether you are responding to an industrial accident, managing an OSHA inspection, or proactively seeking advice regarding how to operate your business in compliance with health and safety regulations, Bryan Cave attorneys have the knowledge and experience to advise you and as necessary defend. Our group of regulatory and litigation safety and health attorneys includes lawyers from our environmental and labor and employment client service groups who have extensive experience advising clients regarding state and federal health and safety laws, policies and programs. Many of our lawyers have science or engineering backgrounds which allows us to better understand, interpret, and apply even the most technical regulatory standards (e.g., process safety management). We represent clients of all types and sizes including Fortune 100 companies, family-owned businesses, manufacturers, contractors, service providers, landlords, hospitals, universities, merchandising and distribution companies, among many others. Our attorneys are located in Bryan Cave offices across the United States and regularly advise clients in state and federal jurisdictions regarding both the general industry and construction standards. Through our significant experience we know many inspectors and key government officials which allows us to provide the best possible insight and advice to our clients. Below we provide an overview of the more routine areas where we regularly advise clients.

General OSHA Compliance Counseling

Bryan Cave regularly provides clients with compliance advice and counseling concerning virtually all areas of Occupational Safety and Health Law and state level counterparts. We help clients draft, implement, and audit their health and safety programs; interpret OSHA regulations and apply them to real world situations; and otherwise understand what specifically is needed to achieve and maintain compliance. Further, our counseling advice to clients has included providing opinion letters; preparing and submitting requests for variances; advising how to prepare for OSHA inspections including inspections immediately following employee deaths or as a result of OSHA enforcement initiatives; preparing comments regarding proposed rulemakings; and helping clients comply with OSHA recordkeeping requirements.
Representation During OSHA Inspections

When an OSHA inspector arrives at a facility, managing the inspection process and responding to the inspector’s inquiries can significantly affect the course of the inspection and ultimately the inspection results. Our attorneys have extensive experience in managing inspections directly through participation at a client facility, and indirectly by advising our client behind the scenes. We often receive calls from clients when an OSHA inspector shows up at their door to conduct a routine inspection, respond to an employee complaint, or to investigate a worker injury or fatality. Our health and safety lawyers regularly advise clients on how to respond to these situations, inquiries and often actively participate in the site inspections including the opening conference, walk-around portions of the inspection, the closing conference, and any ensuing enforcement proceedings.

Enforcement Defense

Bryan Cave routinely represents clients who have received a citation, notice letter regarding an employee complaint or other written notice signifying the commencement of an OSHA investigation (e.g., deposition notice or order). We are often able to resolve enforcement matters through “informal settlement conferences,” but we also routinely represent clients who contest citations and defend them in matters brought before the OSHA Review Commission or comparable state organization.

Retaliation and Whistleblowing Complaints

Employers are precluded from discriminating against employees for exercising rights provided for under Section 11(c) of the OSHA Act of 1970. Employee protections include the right to complain to the employer, OSHA, or another governmental agency about safety and health hazards, and include certain rights to participate in OSHA inspections and hearings. OSHA has authority to file complaints against employers which OSHA believes have illegally taken an adverse employment action against an employee, and we frequently assist employers during these investigations that are conducted by an investigative unit specifically assigned to Section 11(c) cases. We defend clients during the course of these investigations and subsequent enforcement matters.

OSHA has also been delegated authority to investigate complaints under the Surface Transportation Assistance Act (“STAA”) concerning alleged retaliation for engaging in protected activities relating to commercial vehicle safety and health, as well as the whistleblower provisions contained in several other acts, including the Clean Air Act and the
Toxic Substance Control Act. Unlike Section 11(c) complaints, if the employer or employee objects to OSHA’s initial findings, a hearing is held before an Administrative Law Judge of the Department of Labor. We have experience with defending clients in these matters.

Union Relationships and OSHA

Occasionally employers see an increase in the number of employee complaints filed with OSHA during collective bargaining activities. Our attorneys have experience in understanding the underlying labor matters, communicating with OSHA and union officials, and advising employers regarding their rights and how to respond to the specific nature of the complaints.

Further, since complaints are often filed with OSHA during organizational drives, we have been called upon to conduct safety and health audits in order to evaluate the level of compliance and to help prioritize employer responses to observed deficiencies. In addition, when safety concerns surface in the grievance process, including arbitrations under collective bargaining agreements, our safety and health lawyers routinely are called upon to handle such disputes.

Transactional Due Diligence

Understanding risks and liabilities associated with a labor force and whether a facility is operating in a safe and healthy manner is often important to properly evaluating and valuing a business acquisition, and we are often engaged to perform the necessary due diligence to understand whether a target’s health and safety program is effective and in compliance with current standards. This process has included the analysis of OSHA citation history, injury logs, as well as an evaluation of the target company’s overall safety and health program.

OSHA Audits

Maintaining compliance with the ever changing regulatory landscape is challenging for all companies and a tool which we frequently use with clients is compliance auditing. Often times we will engage a qualified health and safety consultant to assist with the on-site inspection components of an audit. The inspection results are then used as a basis for providing compliance advice to the company. Based on the results, we assist clients in prioritizing compliance issues and developing controls to address deficiencies. Used in this context, the inspection reports are positioned to take advantage of certain legal privilege protections whenever feasible. With the exception of certain SIC codes (e.g., for some retail trade, financial and service industries), general industry employers are required to maintain OSHA
300 Logs tracking their OSHA recordable injuries and illnesses. OSHA recordkeeping is a compliance issue that is examined by the Agency during virtually every inspection and is a compliance requirement that has historically resulted in significant employer penalties. We have been called upon to conduct audits of employers’ logs and recordkeeping practices on numerous occasions. Additionally, we conduct recordkeeping training classes and assist employers in ensuring that their recordkeeping system works effectively.

**MSHA**

Bryan Cave attorneys assist mining companies and mining-related employers by providing advice during union representation campaigns when working conditions, including safety and health concerns, are an issue raised by unions desiring to be the collective bargaining representative.

**Criminal Matters and Related**

OSHA is not afraid to use its statutory authority to pursue criminal charges against a company or its officers in matters involving intentional acts or severe industrial accidents. Bryan Cave has attorneys with significant experience in defending clients in criminal matters including attorneys who previously were members of the United States Attorney’s office or the United States Department of Justice. We have successfully defended clients from significant allegations of wrongdoing.

**Representation in Agency Rulemakings**

The Occupational Safety and Health Administration must follow a statutorily mandated process when it intends to promulgate a new safety and healthy standard. We have represented clients in all aspects of the Agency’s rulemaking process including, but not limited to such activities as preparation of witnesses to testify at informal public rulemaking hearings, preparation of written comments for submission to the Agency, cross-examination of hearing witnesses, and providing testimony on behalf of clients at rulemaking proceedings.

**Defense of Civil Litigation**

Any time a serious industrial accident or death involves an employee, there is a risk that the employee or the employees’ surviving family may attempt to sue a company directly or, when direct suits are barred by worker compensation laws, indirectly by suing an equipment manufacturer or other potentially responsible third party. We often advise clients regarding these risks and how to protect against and if necessary defend this type of litigation.
Leadership

Bryan E. Keyt
(Leader)
Partner
Chicago, Illinois
Bryan.Keyt@bcplaw.com