

The “Other Yates Memo:” DOJ To Enhance Workplace Safety Violation Prosecutions By Tacking On More Severe Charges Where Possible

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On Sept. 9, 2015, Deputy Attorney General Sally Quillian Yates issued a memo pronouncing the Department of Justice’s (DOJ) reinvigorated strategy to “combat corporate misconduct” by targeting “the individuals who perpetrated the wrongdoing.” The memo became widely known as the “[Yates Memo](#).” However, on Dec. 17, 2015, Yates issued another memo to all 93 U.S. attorneys that largely fell under the radar. While this “[Other Yates Memo](#)” has received less attention, it bears significant importance for corporations in patrolling work safety violations. In the memo, Yates announced the DOJ’s intention to enhance the prosecution of work safety violations to increase deterrence. Work safety violations are typically misdemeanors punishable by a fine of no more than \$10,000 and/or imprisonment for no more than six months. According to Yates, the historically low amount of prosecutions for such violations could be because these are not considered serious offenses. “Prosecutors can make enforcement meaningful by charging other serious offenses that often occur in association with [work safety] violations,” Yates wrote. Where possible, Yates specifically encouraged U.S. Attorneys tack-on additional charges to the Occupational Safety and Health Act (OSHA) violations, such as “false statements, obstruction of justice, witness tampering, conspiracy, and environmental and endangerment crimes[.]” These other charges not only escalate the prior misdemeanor to a felony, but they carry penalties “ranging from 5 to 20 years’ incarceration” in addition to significant fines. To achieve this crackdown on work safety crimes, the DOJ announced in a follow-up [press release](#) that it will coordinate efforts with the Department of Labor to “us[e] Title 18 and environmental offenses . . . to enhance penalties and increase deterrence.” The statutes listed as being targeted for enhancement include OSHA, the Migrant and Seasonal Agricultural Worker Protection Act, the Atomic Energy Act, and the Mine Safety Health Act. The DOJ announced it will transfer the responsibility from prosecution under these statutes from the Criminal Divisions Fraud Sections to the Environmental Crimes Sections and stated a Criminal Coordinator will be designated at the Department of Labor for this purpose. There are a number of steps corporations can take to decrease the risk of prosecution, such as reviewing and enforcing their work-safety policies and procedures for compliance. As the government steps up its enforcement of work safety crimes, corporations should be aware of where potential ancillary violations exist and take the necessary step to prevent the government from bolstering its charges.

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