

Alert | Labor & Employment



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The Eleventh Circuit Expands the Definition of ‘Machine’ Under the OSHA Lockout/Tag-out Standard

On July 13, 2017, the Eleventh Circuit Court of Appeals was tasked with deciding what constitutes a “machine” under OSHA’s lockout/tag-out (LOTO) standard (29 C.F.R. § 1910.147). *Sec’y of Labor v. Action Elec. Co.*, 868 F.3d 1324 (11th Cir. 2017). Specifically, the court had to decide under what circumstances different pieces of equipment are considered one “machine” thus mandating that all pieces of equipment that comprise the “machine” must be de-energized when employees are only servicing one of the pieces of equipment.

Under the LOTO standard, employers are required to de-energize machines in which the release of stored energy could cause injury to employees. The LOTO standard, however, does not define “machine.”

The Eleventh Circuit found that two or more pieces of equipment constitute one “machine” if they do not perform “useful work” in isolation of each other. Thus, if the equipment being serviced serves no purpose apart from the simultaneous operation with equipment creating danger from unexpected energization or release of stored energy, then both pieces of equipment must be de-energized whenever one of the pieces is being serviced. Although the Eleventh Circuit stated that their ruling provides employers “adequate notice” of their responsibilities under the LOTO standard, it provides little guidance regarding what “useful work” means or examples of multi-equipment systems that constitute one “machine.”

The ruling could have profound effects on an employers' business and significantly alter its LOTO procedures. To start, if employers follow this ruling, they will have to analyze whether separate pieces of equipment serve any independent purpose of the equipment that employees are servicing. If the answer to this question is "no," the two pieces of equipment may be considered one "machine" and therefore the equipment that is not being serviced must still be de-energized. De-energizing additional pieces of equipment could take a significant amount of time which may mean a loss of production time. This could equate to the loss of thousands and possibly millions of dollars depending on how long it takes to de-energize certain equipment. Finally, the ruling also potentially leaves employers, especially those with complex systems comprised of many different pieces of equipment (*e.g.*, a steel mills and refineries) susceptible to OSHA second-guessing employers' LOTO procedures.

The Eleventh Circuit's decision is not binding on other circuit courts and it is not yet the law of the Occupational Safety and Health Review Commission. However, employers should expect the OSHA to enforce the LOTO standard consistent with this ruling. Given this, employers should consider analyzing and documenting the reasons for not locking out equipment when another piece of equipment in an interconnected machine or system is de-energized for maintenance and service. That is, employers should document why there is no foreseeable risk of harm if a piece of equipment that is part of a larger system of equipment is not locked out while another piece of equipment is de-energized and serviced. If an employer finds that it is reasonably predictable that the equipment not being serviced could unexpectedly become energized while another piece of equipment is de-energized and being serviced, the employer should take steps to ensure that the machine is locked out and de-energized.

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