

Mike Taylor:

[inaudible] Hello Everyone. And welcome to the next episode of the workplace safety review podcast. I'm your host, Mike Taylor. I am the chair of the OSHA practice group at Greenberg Traurig and, uh, based out of our Washington DC and Northern Virginia offices. I've been practicing OSHA law for roughly about 20 years now. And if you want to find out more about me or our OSHA practice group, you can go to [www.gt.law.com](http://www.gt.law.com).

Mike Taylor:

I'm joined by my colleague, Adam Roseman. Who's also a part of our group and he's based out of our Philadelphia office. If you want to learn more about our OSHA practice or Adam and I in general, feel free to look us up on [www.gtlaw.com](http://www.gtlaw.com). We have a very special guest today, and I'm very excited about this. We have Doug Parker who is the head of California. OSHA. Doug is an attorney and has a long resume, uh, in politics. He is a former assistant to Senator Paul Wellstone. He also has worked in the press operations for the democratic national committee during the illustration. He was a staff attorney for the United workers, my workers of America in the late 1990s. And in 2009, he was named as a senior policy advisor and special assistant at the mine safety and health administration, and served as a secret assistant secretary of labor for M shift from 2014 to 2015, he had attended university school of law. Welcome Doug.

Doug Parker:

Well, thank you. Thanks for inviting me and giving me the opportunity to speak to you today. Well, we're delighted

Mike Taylor:

That you're here. I know lots of things have been going on with Cal OSHA of late. So this is a real treat for us. How long have you been with Lucia?

Doug Parker:

Well, let's see. I started in late September of 2019, so I guess that's around 15 months or so I started dealing with COVID about six months into the, into my tenure here.

Mike Taylor:

Where are you based?

Doug Parker:

We're based in Oakland, California.

Mike Taylor:

And how many for some people that may not know how many offices does Cal OSHA have throughout California physical presence?

Doug Parker:

Uh, let's see it, I believe we have 24 offices in enforcement throughout the state, and then we also have our other units outside of enforcement. So we have our consultation branch, and then we have a

number of public safety units that aren't directly involved in occupational safety and health, but are part of CalOSHA. So we have an elevator unit that inspects elevators in the state of California pressure vessel unit that inspects, you know, pressure vessels, and then we are responsible for, or inspecting amusement rides and tramway. So that's another unit all together. And a lot, a lot of them are co located. I don't actually have a firm number on how many unique sites we have, but suffice to say we're all over the state from Redding to San

Mike Taylor:

Diego. I imagine quick follow up question with that with those particular groups are, let's say you have a process safety management group, I believe, right? The people that are part of that group, do they get certain kind of special training for PSM to be part of that group? Do you know?

Doug Parker:

Yeah, they get trained. Um, you know, we don't have an academy like a federal ownership, but we do, uh, put our staff through extensive training once they're hired. So someone in process safety management, um, is probably spending, you know, one or two years getting to know the system and getting to learn the standards and, um, uh, tagging along with someone until they're really fully ready to conduct inspections on their own. And that's true for the other units too. I mean, sometimes folks come in with, um, more experience than, than others. And so that can vary, but our training is, um, you know, primarily on the job and through mentorship and through our training unit that does a lot of virtual training of our staff. Hey,

Adam Roseman:

This is Adam Roseman, just, you know, because of your unique position at the sort of top of the pyramid is the chief. Can you sort of walk us through, what is your, what is your job duties entail? I mean, I think we all understand what inspectors do, but sort of where do you get involved and, and walk us through sort of what's on your plate during the day.

Doug Parker:

I'm spending a lot of time on, on enforcement and standards these days, as you might imagine, because so much of our efforts are focused on COVID-19. So I would say it's, it's a mix of various duties. I have, I spend a lot of time with our regional enforcement team talking about particular incidents that are happening right now and how we are responding to, um, the current event spent a lot of time with our research and standards unit talking about our regulation and its implementation. I certainly have lots of administrative responsibilities in terms of management because we're in the middle of a drive to address our vacancy rate through a lot of hiring right now. So that, that takes up some of my time and also dealing with the other, other units in the agency. So, you know, the elevator unit pressure vessel, you know, a lot of those units are well-managed and don't require a ton of my time.

Doug Parker:

And then I spent a fair amount of time engaged with other agencies. Currently there's a lot of inner agency efforts to address COVID-19 on a, on a statewide coordinated basis. So I spend quite a bit of time on calls with other agencies, coordinating calls, speaking to other departments on how we can work together to address particular challenges, uh, as we're moving forward on COVID-19 as well as on, on other issues. So it's, you know, it's a mix of kind of managing and coordinating with other agencies on a, on a more strategic response to COVID, but COVID is certainly dominating my time these days.

Adam Roseman:

For sure. For sure. Doug, and I'm curious, so we'll put COVID aside for the moment, but beyond COVID, what are some of the more challenging things you sort of had to deal with in your 15 months? Or would you say because you came in, in September, 2019, that it really was, you hit the ground running on COVID and that's been the primary driver.

Doug Parker:

Well, I think whenever you come into an organization, you have to spend a lot of time figuring out how it actually works, you know, and, and what the procedures are that are in place, what the interaction is with the legal unit, you know, how enforcement actually happens on the ground. And, you know, you're just trying to gather information, trying to get oriented, trying to learn where, you know, the most important sources of information are and what, what you should be focused on and who can give you background. I would've liked to have spent more time talking with staff, and that was a priority I had when this started, but COVID has really curtailed my ability to travel around and talk to people. I came into an agency where we'd had a significant vacancy rate as a result of kind of lapse in, in hiring that had happened after a state auditor report on hiring practices required a complete top to bottom review of our policies and a lot of rebuilding of our staffing up infrastructure. And so that was probably the biggest challenge coming in, figuring out how we can kind of get resourced and organized to do our job. That makes sense. That

Mike Taylor:

Makes sense. Yeah. That's interesting. You say that Doug, I know from a federal OSHA perspective, they're down a couple of hundred compliance officers from, let's say 10 years ago, and I'm told that a lot of it is just the people who've been there for so long are retiring and getting out of business. It's finding the replacement for those folks is that kind of, what's been happening in California.

Doug Parker:

There's definitely a cliff effect whenever there's been a buildup, you know, 20 to 30 years ago. And I think that happened with OSHA and I think it happened with, with CalOSHA. Uh, there was a big hiring surge, you know, in, I guess the eighties and early nineties and a lot of people who are, you know, came on in that time are now reaching retirement age. We have, uh, an average age in our enforcement personnel in the mid fifties. I know that was the case when I was at the mine safety and health administration. Uh, it is, uh, I don't know what the, what the demographics are at federal OSHA, but, um, you know, that, that presents challenges. You've got a lot of institutional knowledge that may be leaving. You've got, you know, that kind of brain drain. And, um, and it's just a, um, a real challenge to focus on the institutional management needs that you have to be focused on to kind of walk an agency through that and maintain continuity and the fourth, but it's also, you know, it's an opportunity about hire people with fresh perspectives and an opportunity to hire people with strong backgrounds.

Doug Parker:

And so we're trying to look at it as an opportunity, even though it was certainly there's no substitute for that kind of experience. Has it been

Adam Roseman:

Challenging in the hiring process in light of COVID to because safety and health is so hands-on and, and, and obviously interviewing is so hands on, has it been a challenge to sort of staff up and, and, and sort of address those issues via, you know, via telework, so to speak?

Doug Parker:

I don't think that that's been a major obstacle, you know, for portions of the pandemic, when we weren't under shut down, we were able to conduct some in-person interviews on a physically distance basis. I, you know, I had interviewed a few people in a large conference room where we were 20 feet away from each other and that worked, and I've also done interviews, uh, virtually. So it's, you don't get the richness of exchange that you have, obviously when you're interviewing somebody in person and can shake their hand and talk to them and in a more intimate way, but you can still kind of get the job done. It's not been a major, major impediment. I don't think it's more the, uh, kind of administrative shepherding of all of the pieces of it as you've got your team kind of spread out virtually. That's probably a bigger challenge than, than the actual interviews.

Mike Taylor:

The question I have for you is California is the, I believe it's the only land state that has an infectious disease standard on the books. Do you see that being amended in 2021 to dress viruses like COVID-19? So

Doug Parker:

We've not put a lot of thought into what we might do on our infectious disease standard, um, or it's primarily for healthcare and congregate living settings. You know, we've been focused primarily on the emergency temporary standard for COVID-19 for general industry. I don't want to speak kind of getting ahead of ourselves. I think we already have a pretty significant workload with our regulatory agenda already. And I think that the infectious disease standard is basically working and people are making it work. You know, there are parts of it that are, you know, when crafted was, seemed to be focused on, uh, on kind of localized outbreaks of things like TB or, you know, or, uh, factions disease, rather than whenever you've got a major pandemic, that's gonna stress the systems and stress the, you know, the legal structures a little bit. But I think that our ATD standard is working and, you know, not withstanding some issues around the implementation and respirator shortages, you know, when it's followed it, I think it's effective in protecting workers in those settings, in terms of,

Adam Roseman:

You know, this emergency temporary standard. How do you sort of balance in your head? You know, you've got this robust emergency temporary standard that addresses a lot of issues that, that CalOSHA things are, you know, are, are helpful to mitigate the spread with the large community spread, right? That's happening all over the country and especially in California. So how do you sort of balance those two concepts, right? Because you obviously want employers to, to follow that standard, do the right thing, but it's also, you've got huge community spread. So you've got outside the workforce issue. So I'm just curious where your head's at with that.

Doug Parker:

On the one hand, you don't want to punish employers for transmissions that aren't happening in their workplace when they have protections in place, and you don't want to Geoff public costs to private employers where they don't have a kind of responsibility or culpability, maybe a better word. On the

other hand wall transmission in the workplace begins as community transmission. It all begins somewhere else and it gets into the workplace somehow or another. And once it's there, it is a, it is a hazard to the employees and employers have to have to address it. And so that's really the balance that we've tried to strike out of that we can't ignore it just because it's gotten into the workplace via community spread. It's still a hazard once it's in the workplace. And so that is not necessarily fair to an employer. Who's done everything that they can do to prevent transmission, but we want to make sure that everybody's focused on the here and now and what they need to do on an ongoing basis to prevent transmission. And that includes addressing COVID-19. However, it enters the workplace, whether it's through an employee or a, or a customer or a, whatever, it might be.

Mike Taylor:

One of the questions that I had when I first read the temp COVID standard was looked at, looked like there wasn't any kind of grace period on which to develop programs and procedures and be ready. If OSHA shows up at your door to do an inspection, have you thought about post promulgation of maybe let's say a day where for 30 days, and we're going to give you a chance to get your ducks in a row. And after that, you know, we may be able to come in and do some unfortunately,

Doug Parker:

You know, under our emergency temporary standard process, the default is immediate application and it all happens very fast. We've told employers and we've put out FAQ's to this effect that we're going to take, you know, good faith compliance into effect. And I've made public statements that, you know, we understand that people are not going to have everything in place and, uh, you know, on day one, and that we want employers to have go through a thoughtful process of implementation, not just slapping something in a model plan so that they have it on file. We want meaningful compliance. A lot of the measures that one would require have been articulated previously in our guidance that we put out with CDPH. And so a lot of employers should be in pretty good shape on most requirements in terms of having things in place. But we do recognize that. And to answer your question, we have, we have contemplated, you know, legal parameters under our administrative law.

Adam Roseman:

Just a question about, you know, we're hearing employers say, you know, we want to comply. We want to work hard at this. We want to do what's right for our employees and our customers, et cetera. If they get a case they really want to go through that analysis of who's been exposed or potentially exposed what in your mind, or, or CalOsha's mind do they want to see, you know, if you come in, what do you guys sort of want to see in terms of the effort to go through that? Because employers aren't infectious disease experts, but they certainly are in the best position to say, Hey, John, would you work next to write for more than 15 minutes kind of thing. So again, that's sort of balanced, I'm curious where your head's at with that

Doug Parker:

Employers just have to be diligent and trying to determine where close contexts occurred. So there's some guidance in the, uh, what's called the employer playbook put out by CVPH on how you might do that. But what we would expect is that your employer obviously start the starting point is where, you know, where's the employee work? Is it a fixed location? Are there other people, you know, nearby? And, you know, what's the distance, what precautions have you put in place to ensure physical distancing? Where does the employee take breaks? Was the break room set up to be physically

distance, or, you know, did you dedicate additional space for your break room to make sure that there was physical distancing and, you know, I've just spent staggered. Um, a lot of this is on the front end as to, you know, in terms of develop logistics kind of approach to making sure you're minimizing contact between your team members, employees.

Doug Parker:

And so that can minimize the amount of kind of close contact monitoring that you have to do. But certainly you just have to talk to those people, try to figure out, I mean, we've had our own experiences where an employee has had to come to work because they have some job that requires them to be on site if tested positive and, you know, employees don't always have a clear memory of who they've been in close contact with for Zuma live 15 minutes, you know, on a particular two day timeframe. You know, it's not something that people took notes on necessarily. Uh, and so it's just a good example of how by minimizing that contact, you can make it what kind of remedial actions you have to take, but you make it easier for them to understand and recall what close context did occur.

Mike Taylor:

Some of the priorities of Cal OSHA in 2021, you know,

Doug Parker:

Um, I'm kind of thinking like in a one to two week horizon right now, I have to admit, but for 2021, there are a lot of variables on how we're going to be addressing COVID. So we're first of all, looking to what changes we might make to the emergency temporary standard to make it more effective and how we can streamline it and make it easier for employers to comply with it without compromising effectiveness. That'll probably be the first major thing on our agenda next year is to have an advisory committee meeting, to look at that we had a stakeholder meeting last week and took intake on that. And so that will be one thing. And then monitoring closely all the developments around COVID the vaccine, what that means, what implications are for spread, and who's getting access to the vaccine and what order, all of those are going to be variables that we're going to have to take into account continuing our hiring.

Doug Parker:

We're very eager to build back up our staffing. And one of my major priorities when I came in and, and I'm hoping we'll finally be able to do is to really rebuild our health program. You know, we don't have a lot of industrial hygienists on our team and that hasn't always been the case, but over time we had shifted towards a primarily safety oriented and safety experienced group of post shows. And so having more of that health expertise, well, all I can say is, you know, the last year has really illustrated why it's important, but to not only handle issues like this, but just the handle exposures and other kinds of things that I think have a major impact on worker health and are often don't get the focus that they should, and it should get more focus if you take a risk based approach to what's affecting workers. And so I'd like, that's a major direction I'd like to see us go in and head back to, we've got a lot of good rules on the book about health standards, but I don't really have enough inspectors who can go out and sample and do other things to enforce them. And I'd like to see that change.

Mike Taylor:

I know one of the questions I'm getting from some of my clients is, you know, to be clear is why did it take Cal OSHA almost nine months to promulgate an interim temporary standard for COVID and, you

know, I haven't, and I have on a daily basis about how hard it is for federal or state OSHA plan to propagate something like this that's workable that can apply to everyone. There was a large task that we saw as something that just wasn't like you can ride overnight, if you will. I have

Doug Parker:

To say looking back, we could have done it faster and shave some time off, but it's not an insignificant task while getting it out sooner would have made it in place and available to protect workers. On the other hand, I think if we had done it in June, it might've been had a lot of focus on surface contact and other measures that everybody was kind of focused on and not the aerosol transmission that it's currently focused on and we know now should be focused on. So we had a little more experienced with the pandemic under our belt as a result of that. So that was one benefit. I also think we were really focused in the early months on getting out the guidance and taking a, it was not our first thought to issue an ETS. I think as we got into enforcement mode and after a petition was filed question that it'd be considered, no, the value became more apparent to us of doing an ETS.

Doug Parker:

But again, part of that was we could get out guidance faster than an ATS. And we focused on that first and that's what we did in the first months. And then we turned to the ETS and we were focused in those first months on trying to get compliance and less focused on enforcement except in the more serious cases too. So that was all part of an overall strategy of the state that we were implementing. But as time dragged on, it became clear. We needed a standard that was going to be, allow us to enforce in a more clear way, you know, with a vertical standard.

Mike Taylor:

Well, Evan, Adam, and I wish you the best of luck. We really appreciate you taking your time to speak with us today and the audience about what's been going on with the agency over the last year or so. And again, best of luck to you and thank you for being on our podcast.

Doug Parker:

My pleasure. Thanks for the invitation I enjoyed chatting with you.

Mike Taylor:

You bet. And there you'll have it. We'll be back for the next episode of the workplace safety review podcast. Thanks everyone. [inaudible].