



jackson|lewis
Preventive strategies.
Positive solutions.

OSHA Issues Comprehensive Cranes and Derricks in Construction Rule

Special Report

All We Do Is Work.
Workplace Law. In four time zones
and 46 major locations coast to coast.

www.jacksonlewis.com

JACKSON LEWIS

SERVING THE DIVERSE NEEDS OF MANAGEMENT

Jackson Lewis is one of the largest law firms in the country dedicated exclusively to representing management on workplace issues. The Firm has successfully handled cases in every state and is admitted to practice in all Circuit Courts of Appeal and in the United States Supreme Court. With 46 offices and more than 650 attorneys, the Firm has a national perspective and sensitivity to the nuances of regional business environments.

Since 1958 we have represented a wide range of public and private businesses and non-profit institutions in a vast array of industries. When issues arise, we devise optimal solutions that minimize costs and maximize results. Whether we are counseling on legal compliance or litigating a complex case, we assist our clients in achieving their business goals.

In addition, we help employers create policies and procedures promoting positive employee relations. We have built our practice and earned our national reputation over the years by helping companies reduce workplace-related litigation by educating management on legal trends, judicial developments, and statutory and regulatory compliance in the rapidly evolving area of workplace law. Our state-of-the-art preventive law programs utilize the Firm's expertise and unmatched experience to evaluate employment trends and related litigation, minimizing the risk of exposure in future lawsuits.

This Special Report is designed to give general and timely information on the subjects covered. It is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions. This Special Report may be considered attorney advertising in some states. Furthermore, prior results do not guarantee a similar outcome.

Copyright: © 2010 Jackson Lewis LLP

OSHA Issues Comprehensive Cranes and Derricks in Construction Rule

The Occupational Safety and Health Administration (OSHA) has issued a long awaited new rule regarding the use of cranes and derricks in construction. By many measures the most significant safety standard issued by OSHA in the last two decades, the new rule contains over 40 separate sections of detailed requirements in such areas as crane assembly, crane operation, inspections and operator training and certification. Employer representatives and organized labor worked together with OSHA to develop these requirements, which will affect every construction employer in the country that uses a crane in its operations.

Employers have until November 8, 2010—just 90 days from publication of the final rule in the *Federal Register* on August 9, 2010—to come into compliance with the vast majority of the provisions in the new rule, which, including the preamble, economic analysis and regulatory text, is over 1,000 pages long. OSHA estimates compliance will cost approximately \$155 million per year. Construction employers must begin familiarizing themselves with the rule's requirements and reviewing their operations to ensure compliance.

Scope of Rule

The final rule has a very broad scope: it applies to virtually all power-operated equipment that can hoist, lower and horizontally move a suspended load. OSHA has provided a list of covered equipment in the rule, including articulating cranes, crawler cranes, floating cranes and tower cranes.

There are, however, some specific exclusions from coverage. For example, machinery that would otherwise be covered by the rule is excluded if it has been converted to a non-hoisting/lifting use. Aerial lifts are also excluded, as are forklifts, except when they are configured to hoist and lower by means of a winch or hook and horizontally move a suspended load.

The Agency also carved out an important exception for certain material delivery operations. Articulating/knuckle-boom truck cranes that deliver material to a construction site when used to transfer materials from the truck crane to the ground—without arranging the materials in a particular sequence for hoisting—are excluded from the scope of the rule. The same truck cranes are also generally excluded when used to transfer building supply sheet goods or building packaged materials from the truck crane onto a structure using a fork/cradle at the end of the boom. The exclusions do not apply, however, when the crane is used to hold, support or stabilize any material. They also do not apply when the material is a prefabricated component, is a structural steel member, or is a component of a systems-engineered metal building.

Operator Qualification and Certification

The most significant aspect of the new rule is the requirement that crane operators must be certified prior to operating any covered equipment. In what could be seen as a change in past practice, OSHA has mandated that crane operators otherwise required by local laws to be licensed to operate cranes in

their jurisdictions must be licensed to be in compliance with OSHA standards, assuming the licensing requirements comply with the following criteria:

- The licensing includes an assessment by written and practical tests;
- The testing meets industry recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment and personnel;
- The jurisdiction itself has determined that it meets the criteria above; and
- The licensing has procedures for “re-licensing” designed to ensure that the operator continues to meet the requisite technical knowledge and skills.

This requirement takes effect on November 8, 2010. OSHA has made clear that employers must bear the costs associated with operator certification.

For employers operating in jurisdictions without licensing requirements that meet OSHA’s criteria, employers will have two principle options for certifying their operators:

(1) *Certification by an accredited crane operator testing organization.* For a testing organization to be accredited it must, among other things, be accredited by a nationally recognized accrediting agency based on that Agency’s determination that industry recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment and personnel have been met. Examples given by OSHA of nationally recognized accrediting agencies include the National Commission for Certifying Agencies and the American National Standards Institute.

(2) *Qualification by an audited employer program.* This option allows employers to qualify operators through their own testing program. However, their programs must utilize tests developed by either an accredited crane operator testing organization or approved by an auditor who is certified by an accredited crane operator testing organization. The administration of the tests must also be audited.

Employers have four years from the final rule’s effective date to fulfill this requirement.

Key Regulatory Requirements

In addition to the new rule’s certification mandate, there are several key requirements for construction employers that use cranes. Not all of these requirements will apply to all operations or to all cranes used. Nevertheless, employers should analyze these requirements against their existing practices to ensure compliance:

- **Ground conditions.** OSHA requires that the ground used to support equipment be sufficiently firm, drained and graded to provide adequate and level support for the equipment. The “controlling entity” must ensure adequate conditions are in place before equipment assembly can take place. A controlling entity is defined as a prime contractor, general contractor, construction manager or any other legal entity which has the overall responsibility for the planning, quality and completion of the project. If

there is no controlling entity for the project, the requirements must be met by the employer that has authority at the site to make or arrange for ground preparations.

- **Assembly/disassembly.** Assembly/disassembly must be directed by someone who meets the criteria of both a competent and qualified person – or a competent person who is assisted by one or more qualified persons (referred to by OSHA as the “A/D director”). This person must have knowledge and training related to crane assembly/disassembly and have the authority to take prompt corrective measures to address hazards. The A/D director must review applicable assembly/disassembly procedures immediately prior to the commencement of an operation unless he/she understands the procedures and has applied them to the same type and configuration of equipment. Furthermore, before commencing assembly/disassembly operations, the A/D director must ensure that the crew members understand their tasks, the hazards associated with their tasks, and the hazardous positions/locations that they need to avoid.
- **Inspections.** The final rule requires inspections of equipment under the following circumstances: (1) when equipment has had modifications or additions which affect the safe operation of the equipment; (2) when equipment has had a repair or adjustment that relates to safe operation; (3) upon completion of assembly of the equipment; (4) prior to each shift; (5) monthly; (6) annually by a qualified person; and (7) where the severity of use or conditions is such that there is a reasonable probability of damage.
- **Safety devices and operational aids.** Covered equipment must be equipped with certain safety devices and operational aids. Required safety devices include crane level indicators boom stops, job stops and horns. Required operational aids include boom hoist limiting devices, luffing job limiting devices and anti-two blocking devices. The final rule also establishes a complicated set of requirements for repairing operational aids and interim protective measures when repairs are taking place.
- **Fall protection for boom walkways.** Equipment with lattice booms manufactured after 15 months from the date of publication of the final rule in the *Federal Register* must be equipped with walkways on the booms if the vertical profile of the booms is six or more feet. The walkways must be at least 12 inches wide, and OSHA prohibits guardrails, railings and other permanent fall protection attachments along walkways in certain limited circumstances.
- **Personal fall arrest and fall restraint systems.** The final rule requires personal fall protection in various situations. For non-assembly/disassembly work, the employer must generally ensure the use of fall protection equipment for employees working on a surface with an unprotected edge more than six feet above a lower level. For assembly/disassembly work, the employer must ensure the use of fall protection for employees on surfaces with an unprotected edge more than 15 feet above a lower level.
- **Keeping clear of the load.** The final rule requires employers to use hoisting routes that minimize employee exposure to suspended loads. At times when an operator is not moving a suspended load, no employees can be within the fall zone except for employees engaged in hooking, unhooking or guiding a load; engaged in the initial

attachment of the load to a component or structure; or operating a concrete hopper or concrete bucket. At times when a load is being landed and during tilt-up or tilt-down operations, only employees necessary to receive a load are permitted to be within the fall zone. No employees may be directly under the load, but they may be in the broader fall zone under certain limited conditions.

- **Signal person qualifications.** The final rule establishes a complicated set of requirements for the use of signals during crane operations, including qualification requirements for the “signal person.” Under OSHA’s new rule, the signal person may be qualified in one of the following two ways: (1) documentation from a third party qualified evaluator that the signal person meets certain qualification requirements; or (2) documentation from his or her own qualified evaluator. The first qualification option allows for portability, *i.e.*, a signal person can move from employer to employer and remain qualified. The second option is not portable.

These are just some of the key requirements. OSHA’s final rule also includes requirements for work near power lines, additional training and numerous requirements specific to certain cranes (*e.g.*, tower cranes, derricks, overhead and gantry cranes, sideboom cranes, etc.)

What Should Construction Employers Do Now?

Construction employers must start the gargantuan task of combing through OSHA’s rule, trying to understand its requirements, and assessing their crane operation procedures. Virtually all of the requirements in the rule become effective November 8, 2010, which does not provide a lot of time for employers to come into compliance. That said, here are some quick compliance hints for construction employers:

- ✓ Review OSHA’s regulatory text thoroughly to analyze provisions applicable to your operations and compare those against existing policies and practices.
- ✓ Contact any crane lessors utilized to determine the steps they are taking to ensure compliance with OSHA’s rule.
- ✓ Coordinate training and crane inspections with crane manufacturers or lessors. Reach out for help!
- ✓ Focus immediately on operator qualification and certification. Employers operating in jurisdictions with compliant licensing requirements have only until November 8th to ensure all operators are licensed.

Jackson Lewis attorneys are available to answer any questions related to the final rule and to assist with compliance. For questions or assistance, please contact Brad Hammock at hammock@jacksonlewis.com, or the Jackson Lewis attorney with whom you usually work.

All we do is
wor**rk**

Workplace law. In four time zones and 46 major locations coast to coast.

jackson | lewis

Preventive Strategies and
Positive Solutions for the Workplace®