2026–2027 Edition Highlights

Once again, the lack of a quorum at the Occupational Safety and Health Review Commission precluded the issuance of any Commission decisions. Nevertheless, there were some interesting appellate decisions to report.

Two cases involved the use of the general duty clause, section 5(a)(1), to require enhanced protections against patient-on-staff workplace violence in healthcare settings. In UHS of Delaware, Inc. v. Secretary of Labor, 140 F.4th 1329 (11th Cir. 2025), the Eleventh Circuit held that the Secretary failed to prove that hiring round-the-clock security staff would be economically feasible. A different result was reached in Cedar Springs Hospital, Inc. v. Occupational Safety and Health Review Commission, 166 F.4th 1211 (10th Cir. 2025). The Tenth Circuit held that there was substantial evidence that hiring more security guards, reconfiguring nurses' stations, and providing staff with silent communication devices could have enhanced workplace safety against the risk of danger from psychiatric patients. Section 6:9.

The Supreme Court's decision in Atlas Roofing Company, Inc. v. Occupational Safety and Health Review Commission, 430 U.S. 442 (1977), held that there was no Seventh Amendment right to a jury trial under the OSHA Act. The Court's decision in Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024), held that there was a right to a jury trial in SEC enforcement actions. Although the statutes are quite different, the *Jarkesy* case has led to lower court case filings asserting that the OSH Act is constitutional because it does not provide for jury trials. It will be interesting to follow this litigation. Section 17:7.

Personal injury litigation from COVID-19 continued. In Mehmedovic v. Tyson Foods, Inc., 21 N.W.3d 412 (Iowa 2025), the estates of decease workers sued the employer and various executives and supervisors alleging fraudulent misrepresentation and gross negligence. The Supreme Court of Iowa held that actions against the company were barred by workers' compensation, but the actions could proceed against the co-employees who, among other things, deliberately misled the workers about the risks of employment. Section 21:5.