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OFFICE

Buffalo

PRACTICE AREAS

OSHA and Worksite Safety
Construction
Corporate Services and
Commercial Litigation
Municipalities and Public Entities



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Michael Rubin is chair of the firm's OSHA and Worksite Safety Practice Group. A Certified Safety Professional (CSP), Michael focuses his practice on issues involving occupational safety and health law. He advises and represents employers across multiple industries in connection with OSHA inspections, investigations, and enforcement actions. He has on-the-ground experience managing accident investigations, negotiating for the withdrawal and settlement of citations, contesting citations, and litigating matters before the Occupational Safety & Health Review Commission — including trials and appeals. Michael has completed the OSHA-30 Construction and General Industry training, and regularly counsels employers on safety compliance and best practice strategies for minimizing risk.

Michael is frequently asked to speak about OSHA at various local and national industry events including safety conferences hosted by EHS Today, BLR, American Society of Safety Engineers, and Associated Builders and Contractors. He provides practical insights as the author of a monthly OSHA column for *Modern Contractor Solutions* and is co-editor of Goldberg Segalla's OSHA: Legal Developments and Defense Strategies blog. He also serves on the Safety Committee for the Construction Exchange of Buffalo & WNY.

Michael's recent OSHA experience includes:

- Representing a recycling company during a months-long, programmed OSHA inspection – negotiated for the withdrawal of multiple violations and a reduction of over 50% in penalties
- Representing a school in connection with an OSHA investigation related to alleged employee exposure to asbestos – no citations were issued
- Representing a railroad contractor in connection with an OSHA inspection stemming from an employee being struck by a motor vehicle – no citations were issued
- Representing a general contractor after an employee suffered a leg amputation – OSHA withdrew the entire citation
- Successfully filing a Petition for Discretionary Review with the Occupational Safety & Health Review Commission in a fatality case involving a painter and electrical transmission tower

In addition to his OSHA practice, Michael defends owners and contractors through trial in high-exposure construction actions alleging violations of the New York Labor Law — including the "Scaffold Law." He possesses an AV rating from Martindale-Hubbell and has been recognized as a Super Lawyer in New York State.

Honors

- AV Preeminent Peer-Review Rating (Martindale-Hubbell)
- Upstate New York *Super Lawyers*, 2015–17
- *View peer-review methodologies at martindale.com and superlawyers.com. No aspect of this advertisement has been approved by the Supreme Court of New Jersey.*

Professional Affiliations

- American Bar Association
 - Occupational Safety and Health Law Committee
- Associated Builders & Contractors, Inc.
 - WNY Regional Leadership Committee
- Construction Exchange of Buffalo and WNY
 - Safety Committee

- Specialized Carriers and Rigging Association

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Community Involvement

- Board Member, Epilepsy Association of WNY

Training/Certifications

- Certified Safety Professional (CSP)
- Associate Safety Professional (ASP)
- Construction Health and Safety Technician (CHST)
- OSHA 510: Occupational Safety and Health Standards for the Construction Industry
- Department of Labor OSHA-30 Construction Training
- Department of Labor OSHA-30 General Industry Training

Admitted to Practice

- New York
- New Jersey
- U.S. District Courts for the Northern, Southern, Eastern, and Western Districts of New York
- U.S. District Court for the District of New Jersey

Education

- Seton Hall University School of Law, J.D., 2000
- University of Delaware, B.A., 1993

Presentations/Publications

- Presenter, "NY Construction Accidents: The Interplay of Workers' Compensation Claims, Third-Party Claims, the New York Labor Law, Risk Shifting, and OSHA," Columbia University Construction Safety Presentation, New York City, February 20, 2018
- Co-Presenter, "Construction — What's Trending in 2018: A Tool Box for Successfully Developing and Safely Completing Construction Projects in the New Year," GS Construction Series, January 18, 2018
- Author, "Contesting an OSHA Citation," *Modern Contractor Solutions*, December 2017
- Presenter, "2017 OSHA Year in Review," Genesee Valley/Finger Lakes Region EH&S Professional Development Conference, Rochester, NY, December 6, 2017
- Author, "Minimizing OSHA Exposure," *Modern Contractor Solutions*, November 2017
- Presenter, "OSHA and The Trump Administration: The First 200 Days," November 1, 2017
- Author, "How Your Voluntary Safety Audits Can Help (or Hurt) When OSHA Shows Up ," *Modern Contractor Solutions*, October 2017
- Author, "Minimizing OSHA Liability: More Than an Ounce of Protection ," *Modern Contractor Solutions*, September 2017
- Author, "OSHA and the Trump Administration: The First 200 Days ," *Modern Contractor Solutions*, August 2017
- Author, "OSHA's Multi-Employer Citation Policy and Construction Sites: Who Is An Employer? " *Modern Contractor Solutions*, July 2017
- Author, "OSHA and Owners: Defining and Mitigating Risk on Construction Projects ," *The Voice*, Summer 2017
- Presenter, "OSHA Mid-Year Report: the Impact of the Trump Administration and What to Expect Looking Ahead," DiVal 2017 Safety Summit, Niagara Falls, NY, June 7, 2017
- Presenter, "How to Stay in Compliance with OSHA's New Injury Tracking Rule: Incentive Programs, Post-Accident Drug and Alcohol Testing, and a Whole Lot More!" DiVal 2017 Safety Summit, Niagara Falls, NY, June 6, 2017
- Presenter, "OSHA Training: To Record or Not to Record (Occupational Injuries and Illnesses)," DiVal 2017 Safety Summit, Niagara Falls, NY, June 5, 2017

- Author, "Preparing for an OSHA Inspection 101," *Modern Contractor Solutions*, May 2017
- Author, "OSHA Interviews: Understanding and Exercising Your Rights," *Modern Contractor Solutions*, April 2017

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- Presenter, "OSHA Electronic Recordkeeping and Anti-Retaliation Rules," Associated Builders and Contractors, Rochester, NY, April 19, 2017
- Presenter, "OSHA and the Construction Industry: What Employers Need to Know," Associated Builders and Contractors, Buffalo, NY, April 18, 2017
- Presenter, "OSHA Update 2017: Electronic Injury and Illness Reporting, Anti-Retaliation (... and more)," Construction Users Roundtable (CURT) 2017 Spring Safety Summit, Cincinnati, OH, April 12, 2017
- Presenter, "First Aid or More? How to Comply with Injury & Illness Reporting to Ensure that Medical Treatment Is Properly Categorized and Accounted for in OSHA Filings," BLR 2017 Safety Summit, Austin, TX, April 5, 2017
- Presenter, "From Zero to Hero – OSHA-Compliant Safety Incentives that Work," BLR 2017 Safety Summit, Austin, TX, April 4, 2017
- Presenter, "OSHA Update 2017: the Trump Administration, New Regulations, and What You Need to Know," Associated Builders and Contractors, Syracuse, NY, March 30, 2017
- Author, "Congress Overturns OSHA Recordkeeping Rule," *Modern Contractor Solutions*, March 2017
- Presenter, "Utilizing the Unpreventable Employee Misconduct Defense as a Roadmap for Your OSHA Compliance and Safety," Safety Executives of New York (SENY) Professional Development Conference, New York, NY, March 2017
- Presenter, "New York Labor Law – Claims and Defenses," Doral, FL, March 2017
- Presenter, "Minimizing the Risk of OSHA and New York Labor Law Liability for Roofers – Contract Drafting, Safety Compliance, and Other Considerations," Buffalo, NY, March 2017
- Presenter, "The Cost of an Injury and the Value of Using Leading Indicators," ABC Workforce Week 2017, Fort Lauderdale, FL, March 1, 2017
- Author, "Does Settling an OSHA Citation Make Good Business Sense?" *Modern Contractor Solutions*, February 2017
- Author, "Establish a Strong OSHA Defense Before an Inspector Shows Up," *Modern Contractor Solutions*, January 2017
- Presenter, "Your Safety Culture and Compliance: Making and Keeping Safety Resolutions for 2017," Construction Exchange Safety Services, Buffalo, NY, January 2017
- Presenter, "The Accident and Investigation," NYSBA Labor Law Claims, Coverage, and Litigation CLE Seminar, Syracuse, NY, December 2016
- Presenter, "OSHA and the New York State Industrial Code Rules: Two Sets of Safety Requirements for Contractors in NY," American Society of Safety Engineers, Buffalo, NY, October 2016
- Quoted in "SLC 2016 - OSHA Citations: The Best Defense Is a Good Offense," *EHS Today*, September 29, 2016
- Presenter, "Preparing Your Best Defense to an OSHA Citation ... Before OSHA Shows Up!" EHS Today Safety Leadership Conference, Pittsburgh, PA, September 2016
- Presenter, "OSHA's New Injury and Illness Electronic Reporting Requirements: Your Roadmap to Full Compliance Ahead of the November 1 Deadline," BLR Webinar, September 2016
- Author, "Seven Steps to Prevent Construction Defects and Minimize Liability," *The Voice: The Official Magazine of the Construction Users Roundtable*, Summer 2016
- Presenter, "Anatomy of a Construction Defect Case: Claims and Defenses," Onondaga County Bar Association CLE, July 2016
- Presenter, "Construction Defect Claims: Defense Strategies for Contractors," Associated Builders and Contractors, Buffalo, NY, June 2016
- Presenter, "Legal Considerations for Safety Professionals: More than Safety?" American Society of Safety Engineers Professional Development Conference, Skaneateles, NY, June 2016

- Co-Author, "Construction Defect Claims: A 2016 Update ," *Mealey's Litigation Report: Construction Defects Insurance*, June 2016
- Presenter, "OSHA 2016 Regulatory Update: Cranes, Confined Spaces, Silica (... and more)," Construction Users Roundtable (CURT) 2016 Spring Safety Summit, Cincinnati, OH, April 2016

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- Featured in "16 Legal Tips: Handling OSHA Citations the Right Way ," Intelivert, April 2016
- Presenter, " Building Your Best OSHA Defenses – Now – Before OSHA Shows Up," Associated Builders and Contractors, Rochester, NY, April 2016
- Presenter, "Building Your Best Defense to an OSHA Citation," American Society of Safety Engineers, Buffalo, NY, March 2016
- Presenter, "Your Best Defense to an OSHA Citation — The Unpreventable Employee Misconduct Defense," Associated Builders and Contractors, Buffalo, NY, January 2016
- Co-Author, "Groundbreaking OSHA Developments in 2015 to Directly Impact 2016 — and Beyond," *IndustryWeek*, December 31, 2015
- Author, "OSHA Ups the Ante in U.S. Workplaces ," *Buffalo Law Journal*, December 4, 2015
- Presenter, "Best Practices on OSHA – Before, During, and After an Inspection," Associated Builders and Contractors, Syracuse, NY, September 2015
- Author, "Demystifying the Process of Contesting an OSHA Citation ," *IndustryWeek*, July 21, 2015
- Presenter, "OSHA Training: Recording and Reporting Occupational Injuries and Illnesses," Montvale, NJ, July 2015
- Author, "Best Practices Should OSHA Come Knocking," Buffalo Niagara Partnership *Perspectives*, February 2, 2015
- Co-Editor, *OSHA: Legal Developments and Defense Strategies* blog
- Presenter, "Understanding OSHA: Practice Pointers for Inspections and Citations," Associated Builders and Contractors, Buffalo, NY, September 2014
- Author, "Goliath vs. David: Defending the FDIC's Aggressive Claims Against Counsel to Failed Banks," Professional Liability Defense Federation Annual Meeting, September 2014
- Presenter, "The Affordable Care Act and Employment Law Update 2014," Onondaga County Bar Association CLE, Syracuse, NY, July 2014
- Author, "Exploring the Limits of OSHA's Inspection Authority: A Precursor to Exercising Your Rights," *IndustryWeek*, April 4, 2014
- Presenter, "OSHA Training: Confronting an Inspection and Strategies for Minimizing Risk and Responding to Citations," Home Builders & Remodelers of Central New York, March 25, 2014
- Author, "Minimizing OSHA Liability Through (More Than) an Ounce of Prevention," *IndustryWeek*, February 10, 2014
- Presenter, "Warranties and Contracts for New Home Construction in New York," Home Builders & Remodelers of Central New York, November 2013
- Author, "Litigating the Products Liability Case: Law and Practice — Discovery," New York State Bar Association CLE Seminar, October 2013
- Presenter, "The OSHA Are Coming ... The OSHA Are Coming ..." Labor and Employment Update Seminar, Buffalo, NY, June 2013
- Presenter, "Collateral Source Reductions Under CPLR & 4545 and Set Offs Under General Obligations Law & 15-108," NYSBA Basics of Trial Practice After the Verdict CLE Seminar, Albany, NY, April 2013
- Author, "When OSHA Comes Knocking: Now What?" *Progress! Under Construction*, Vol. 2, No. 1, April 2013
- Presenter, "Trends in OSHA Enforcement — The Regulations, Workplace Inspections, and Responding to Citations," Onondaga County Bar Association CLE, January 2013
- Presenter, "Accident Scene Investigations," New York State Bar Association Law School for Insurance Professionals, September 2012
- Presenter, "Construction Accidents: Labor Law & 240, Conducting a Proper Accident Investigation, and Risk Management," Rochester, NY, July 2012

- Presenter, "New York Construction Accidents – Labor Law Update 2012," Onondaga County Bar Association CLE, Syracuse, NY, May 2012
- Presenter, "NY Construction Site Accident Update: Labor Law Section 240, Indemnity Agreements and Insurance," Associated Builders and Contractors, October 2011
- Presenter, "Contract Drafting for Construction Projects," Cazenovia College, April 2011