Q&A With Jackson Lewis' Brad Hammock

Law360, New York (August 18, 2009) -- **Brad Hammock** joined the Washington regional office of Jackson Lewis LLP in 2008 after serving for 10 years as an OSHA attorney within the Department of Labor, including, most recently, for more than three years as lead counsel for safety standards.

Before his promotion to lead counsel, Hammock worked as a regulatory attorney for OSHA and is regarded as one of the U.S.' leading experts on ergonomics.

Q: What is the most challenging case you've worked on, and why?

A: My most challenging case was, in fact, not a case at all. When I started my career in the Office of the Solicitor at the Department of Labor, I immediately began working on the Clinton administration's ergonomics rulemaking. The challenges were enormous: tremendous pressure to produce one of the most far-reaching and expensive rules in OSHA's history in just 18 months.

Stakeholders on all sides were fully engaged in the battle over the rule. And the substantive safety and health issues involved would set OSHA law and policy for years to come. After working tirelessly for months — and literally losing my hair in the process — we ultimately published a final rule at the very end of the administration.

Of course, as everyone knows, the rule was challenged and ultimately overturned by Congress and President Bush pursuant to the Congressional Review Act. It was the first use of the Congressional Review Act to overturn an agency rule in that statute's history. Nevertheless,

every step of the process was memorable and helped shape my career in occupational safety and health law.

Q: What accomplishment as an attorney are you most proud of?

A: As counsel for safety standards with the Department of Labor, I was the lead attorney on OSHA's Employer Payment for Personal Protective Equipment final rule. For years, this rule had been mired in controversy. The rule involved significant legal issues regarding OSHA's authority generally to issue a rule focused on payment issues, and also involved complicated human resource issues related to the practical implementation of the rule to the variety of workplaces affected.

Despite this controversy, we were successful in finalizing the rule. The rule was carefully crafted to address the human resource issues, while at the same time preventing thousands of injuries a year. I was particularly pleased that the rule was not challenged by either industry or labor after it was finalized.

To me, this was an indication that we had done our job well in finalizing an important rule in a way that was fair and made sense to employers and employees.

Q: What aspects of law in your practice area are in need of reform, and why?

A: OSHA's safety and health standards are embarrassingly outdated. In several areas, OSHA requires employers to follow national consensus standards from the early 1950s. Yes — over 50 years ago, before the invention of the microwave oven, the commercial jetliner, cordless drills, cellphones, and the computer.

For employers today, trying to follow these outdated OSHA standards is virtually impossible. The requirements make no sense in today's world and thus employers are forced to "guess" what OSHA expects in terms of safety and health compliance. This is not fair to employers and does not help ensure the safety of employees.

Unfortunately, there is no easy equitable way for OSHA to update these standards. OSHA was allowed for the first two years of its existence to adopt national consensus standards as mandatory OSHA standards without notice and comment rulemaking.

OSHA cannot do so today. As a result, employers continue to struggle with compliance with ancient mandatory OSHA rules, with little hope for change. This is an area where employers, employees and Congress should sit down and try to advance a global solution to update in a fair way the many significantly outdated OSHA standards to the benefit of employers and employees throughout the country.

Q: Where do you see the next wave of cases in your practice area coming from?

A: Secretary of Labor Solis has stated that she will focus additional resources on OSHA enforcement. Employers should expect to see more OSHA compliance officers and inspections over the next several years.

In particular, OSHA has announced that it will be launching several new National Emphasis Programs (NEP) targeting enforcement resources in the following areas: chemical plants (process safety management); primary metals; flavorings and diacetyl; oil and gas well drilling; and recordkeeping. These enforcement programs will result in a new wave of cases focused on employer obligations in these areas.

I also expect to see a greater use of the General Duty Clause by OSHA over the next several years in the area of ergonomics. The Bush administration was criticized by some for not vigorously pursuing General Duty Clause enforcement for ergonomic hazards. Until this administration settles on an approach for pursuing new rulemaking in the area of ergonomics, I expect to see greater pressure on OSHA compliance officers to bring General Duty Clause ergonomics citations.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: One of my mentors while at the Department of Labor was Joseph Woodward, associate solicitor for occupational safety and health. He has had that position at the department for over a decade and, as such, has been involved in most, if not all, of the major developments in OSHA law in recent years.

There are two things in particular that stand out about Joe. First, he has a strong intellect and an almost encyclopedic knowledge of OSHA law. Second, he embodies all of the characteristics of an exceptional career civil servant. He understands that administrations change and these administrations may bring with them different approaches to safety and health protections for employees.

It is incumbent upon civil servants, however, to fairly and without bias provide legal advice to the political appointees and to protect the institution of the Department of Labor. Joe Woodward exemplifies this. For that, he has always impressed me and has my complete admiration.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: OSHA law is not the most popular cocktail party conversation starter. It is sometimes viewed as a nuisance — albeit a necessary one — among labor and employment lawyers. And it is sometimes thought of as a limited area of labor and employment law.

This could not be further from the truth. In fact, OSHA law is quite diverse. Practicing safety and health law provides young lawyers the opportunity to perform trial and appellate litigation, represent clients in OSHA rulemakings, interact with Agency officials on interpretive and other enforcement questions, and provide extensive compliance counseling. Few subject matter areas provide this kind of diversity of opportunities.

A young lawyer interested in getting into this practice area should look for opportunities to get involved in all aspects of OSHA law. Many young lawyers only work on OSHA enforcement cases or do some compliance counseling. They are not exposed to, and do not seek out, work on the broad range of safety and health issues facing employers today.

This is a mistake. Young lawyers should monitor developments at OSHA daily and keep the clients they work with informed of the many different programs initiated, and actions taken, by the agency. This will help them develop the kind of subject matter expertise and knowledge about all the safety and health issues affecting employers that will make them valuable to clients and successful in their careers.