



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20th Street, N.W., Ninth Floor  
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

WAL-MART DISTRIBUTION CENTER  
6016,

Respondent.

OSHRC Docket No. 08-1292

### **BRIEFING NOTICE**

The issues that follow have been identified by the Review Commission as of particular interest on review. The parties, however, are free to brief issues that are presented in the Petitions for Discretionary Review in addition to the ones enumerated below.

- (1) Did the judge err in concluding that Respondent violated 29 C.F.R. § 1910.132(d)(1) by failing to assess the cited facility for present or likely to be present Personal Protective Equipment (“PPE”) hazards?
- (2) Did the judge err in finding that the Secretary established a violation of 29 C.F.R. § 1910.133(a)(1) as to Respondent’s failure to use eye and face PPE, and did not establish violations of 29 C.F.R. §§ 1910.136(a) and 1910.138(a) as to Respondent’s failure to use hand and foot PPE? In briefing this question, the parties should address whether, under relevant circuit court precedent, the Secretary established either Respondent’s actual or constructive knowledge of these violations.

The parties are advised that when the merits or characterization of an item are before the Commission for review, the appropriateness of the penalty is also subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

All briefs are to be filed in accordance with Commission Rule 93.<sup>1</sup> The first brief is to be filed within 40 days of this notice. A party who does not intend to file a brief must notify the

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<sup>1</sup> The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the left-hand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority, other than statutes, case law, law journal

Commission in writing setting forth the reason therefore within the applicable time for filing briefs, and shall serve a copy on all other parties. The time for filing briefs (or similar notices of intent) of opposing parties shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: January 25, 2010

/s/  
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Ray H. Darling, Jr.  
Executive Secretary

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articles and legal treatises, be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.

08-1292

NOTICE IS GIVEN TO THE FOLLOWING:

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