

OSHA announces changes to Electronic Recordkeeping Rule

Article By:

William S. Robbins

In the waning days of President Obama's Administration, the Occupational Safety and Health Administration ("OSHA") announced sweeping changes to its recordkeeping rule, originally to be effective January 1, 2017, which contained a heightened emphasis on injury reporting and anti-retaliation protections. [We wrote about those changes in our Blog on August 4, 2016, which can be accessed here.](#)

Implementation of the new rule was fraught with delay, with OSHA extending various deadlines for compliance. The new rule was also challenged in litigation. Industry groups filed a lawsuit in Texas seeking to block enforcement of the anti-retaliation provisions contained within the new rule. See [Texo ABC/ABG, et al. v. Perez, et al., No. 3:16-cv-01998 \(N.D. Tex. July 8, 2016\)](#). Another consortium of industry groups filed a legal challenge in Oklahoma attacking the new rule's electronic submission requirement for injury data. [Nat'l Assn. of Home Builders, et al. v. Perez, et al., No. 5:170cv000009 \(W.D. Okla. Jan. 4, 2017\)](#). Both of these cases were stayed by their respective court in response to OSHA, under President Trump's Administration, indicating that it would consider revisions to the rule.

On July 30, 2018, OSHA announced its proposed changes to the Obama-era recordkeeping rule. See [83 Fed. Reg. 36494 \(July 30, 2018\)](#). But, if employers were anticipating wholesale changes to the rule, they may be disappointed. There were no changes made to the anti-retaliation provisions or electronic submission requirements for OSHA's Annual Summary Report (Form 300A). The only substantive change proposed in the new rule is the removal of the electronic filing requirement for OSHA Form 300 and 301 that applied to establishments with 250 or more employees. The new proposed rule also adds the requirement that employers submit their Employer Identification Number together with injury data. Employers have until September 28, 2018 to submit comments on the new proposed rule.

As OSHA did not make any changes to the anti-retaliation provisions contained within the recordkeeping rule, OSHA's position on safety incentive programs remains intact. Incentive programs which reward workers for reporting near-misses or hazards or otherwise encourage involvement in the safety and health management program will likely withstand OSHA scrutiny. But rate-based incentive programs, which reward employees based upon injury and illness numbers, may give rise to a record keeping violation if OSHA determines the program discourages the reporting of workplace injuries without improving worker safety.

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