

OSHA Reasserts Its Position That Employers Have A Continuing Duty to Maintain Accurate Injury and Illness Records

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01.30.2017

As one of its last acts under President Obama, the Occupational Safety & Health Administration (OSHA) issued a final rule that requires employers to ensure that their injury and illness records are accurate during the entire five-year period in which employers are required to maintain these records. Specifically, OSHA has stated that it intends to cite employers for inaccuracies that appear in injury and illness logs for a period of six months after the requisite five-year period. OSHA's rulemaking was intended to overrule a 2012 decision of the D.C. Circuit Court of Appeals, the *Volks Constructors case*, which held that employers cannot be penalized for recordkeeping mistakes that occurred more than six months before the date of OSHA's inspection. In its final rule, OSHA added a note to its recordkeeping rule, 29 C.F.R. § 1904.4(a), which states that an employer's obligation to maintain accurate records is ongoing. Industry groups opposed this rulemaking and may seek to block the changes through litigation. Nevertheless, employers that are reviewing their injury and illness logs to create annual summaries should confirm whether older records also require revisions. Presumably, as OSHA shifts to electronic recordkeeping and reporting, it will have an easier time identifying employers who may have been underreporting injuries. The potential cost of non-compliance could be significantly higher if OSHA continues to have the ability to look for errors over a five and one-half year period. This new rule went into effect on January 18, 2017.

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