

Senate Approves Measure to Kill OSHA Statute of Limitations Change for Recordkeeping Violations

Labor & Employment Law Update

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On March 22, 2017, the U.S. Senate passed a measure to revoke OSHA's modification to the six-month statute of limitations for recordkeeping violations. Under the Obama Administration, OSHA issued a new rule to extend the statute of limitations for recordkeeping violations from six months to five years. The changed recordkeeping regulation went into effect in January 2017, but a bill is now on its way to President Trump who is expected to sign the bill and revoke the new regulation.

OSHA issued the new recordkeeping rule on December 16, 2016 in response to an adverse decision by the U.S. Court of Appeals for the D.C. Circuit. *AKM LLC d/b/a/ Volks Constructors v. Secretary of Labor*, 675 F.3d 752 (D.C. Cir. 2012). In *Volks*, the court unanimously held that recordkeeping violations are subject to OSHA's standard six month statute of limitation. OSHA disagreed and argued recordkeeping violations should be subject to a five year statute of limitations inasmuch as employers are required to maintain injury logs for five years. However, instead of appealing the decision in *Volk*, OSHA changed the rule to make recordkeeping violations subject to a 5 year statute of limitations.

Employers were rightfully concerned about OSHA's new rule given OSHA's focus on recordkeeping violations and the inherent difficulty in addressing the context of an entry on an injury log up to five years old. With recordkeeping being such an important requirement that employers must get right, it at least appears that with the new law employers will be relieved from overreaching exposure to penalties for OSHA recordkeeping violations.