

New OSHA Rules & Regulations – What Employers Need to Know

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OVERVIEW

- OSHA applicability
- Employer rights and duties
- Employee rights and duties
- New rule to improve tracking of workplace injuries and illnesses
 - Phase 1: November 1, 2016
 - Phase 2: January 1, 2017
- Required employer action
- Recommended employer action
- Rules on the horizon
- Q&A (time permitting)

OSHA VS. STATE LAW – WHO IS COVERED?

- The Occupational Safety & Health Act of 1970 was passed by Congress
 - OSHA contains procedures by which occupational health and safety standards are to be established and enforced at the Federal level
- OSHA permits each state to elect to assume responsibility for the development and enforcement of such standards
- The Michigan Department of Labor drafted a plan and submitted it to the Secretary of Labor – approved October 3, 1973
 - MIOSHA was passed and made effective on January 1, 1975; MCL 408.1001 et. seq.
- MIOSHA became completely operational as of January 6, 1977 thereby terminating, for all practical purposes, OSHA authority in Michigan

KNOW WHAT LAW APPLIES IN YOUR JURISDICTION

- Arizona: AOSHA; Ariz. Rev. Stat. § 23-401 et. seq.
- Delaware: No State Statute – So OSHA applies
- Illinois: State OSHA applies to Public Employers only – 820 Ill.Comp. Stat. 219/1 et. seq.
- New Jersey: PEOSHA applies to Public Employers only; N.J. Stat. § 34: 6A-25 et. seq.
- Pennsylvania: No State Statute – OSHA applies
- West Virginia: WVOSHA – applies to Public Employers only; W.Va. Code § 21-31-1
- Wash, DC: No statute – OSHA applies

EMPLOYER RIGHTS AND DUTIES

- Under the General Duty Clause, an employer must furnish to each employee a place of employment free from recognized hazards that are causing, or likely to cause, death or serious physical harm
- An employer must post notices and utilize appropriate methods of informing employees of their rights, duties and applicable safety rules and standards

EMPLOYEE RIGHTS AND DUTIES

- Employees must comply with appropriate rules and safety standards promulgated under the Act
- Employees may not interfere with the use of protective equipment or other safeguards
- Employees have right to working conditions that do not pose a risk of serious harm
- Employees may request safety inspections and participate in same
- Employees may review records of work related injuries and illnesses
- An employee may now promptly and accurately report work-related injuries and illnesses

REPORTING OF WORKPLACE INJURIES AND ILLNESSES

- For decades, employers have been required to keep track of workplace injuries and illnesses
- Many employers have a policy requiring employees to report such injuries and illnesses immediately
- Enforcement of this policy is sometimes spotty with little or no penalty or follow-up

PERCEIVED PROBLEMS

- Many injuries/illnesses go unreported
- Employees manipulate reports to enhance safety record
- Employees are subtly (or not so subtly) discouraged from reporting all injuries/illnesses

PERCEIVED SOLUTION

- Improved (electronic) tracking of workplace injuries and illnesses will solve these issues; and create numerous benefits

NEW OSHA REPORTING RULE

- Rule designed to improve tracking of workplace injuries and illnesses
- Requires that some of this information be submitted electronically for posting on OSHA website
- Presumed Effects:
 - Will help keep workers safer
 - Will make employers, the public and the Gov't better informed about workplace hazards
 - Encourages employers to increase efforts to prevent worker injuries and illnesses
 - Enables the examination of data by outside sources to help employers make the workplace safer and healthier, and to more easily identify workplace safety hazards

NEW OSHA REPORTING RULE (CONT.)

- Effects (cont.):
 - Expands access to timely, establishment-specific injury and illness information
 - Expands the ability of Gov't to identify, target and remove safety and health hazards
 - Enables the Gov't to conduct more rigorous evaluations of the impact of injury-prevention activities
 - Will provide public health researchers with opportunities to advance the fields of injury and illness causation and prevention
 - Full implementation will allow employers to demonstrate safe and healthy work environments to persuade investors, lenders, customers and job applicants

SPECIFIC AMENDMENTS

Two Phases:

- November 1, 2016
 - Allows employees to directly, promptly and accurately report work-related injuries and illnesses
 - Requires employers to have a reasonable procedure for employees to report
- January 1, 2017
 - Covered employers will begin electronically submitting workplace injury and illness forms directly to OSHA for publication on the OSHA website

EMPLOYER PHASE 1 REQUIREMENTS

Employers must amend injury and illness policies to:

- Expressly inform employees of their right to directly report work-related injuries and illnesses
- Assure employees of non-discrimination and non-retaliation for doing so
 - Must include an explicit prohibition
 - OSHA can issue direct citations for retaliation without an employee complaint
- Clarify that the reporting method procedure for employees to report workplace injuries and illnesses must be reasonable

PHASE 1 REQUIREMENTS (CONT.)

- Delete any rule deemed “unreasonable” restriction on reporting:
 - Rules requiring immediate reporting with discipline for failure to do so
 - Use a “as soon as reasonably known or recognized” standard
- Employer can not deter or discourage employees from reporting injuries and illnesses
- Rules may not contain any incentives or disincentives to cause a “reasonable” employee to fail to report a workplace injury or illness
 - Raffle drawing or safety bonus when no injuries are reported
 - Perfect attendance bonuses

PHASE 1 REQUIREMENTS (CONT.)

- Requiring (or threatening) submission to drug or alcohol tests, post accident
 - OSHA comments target “blanket” post-injury drug testing policies
 - Need a “reasonable possibility” that drug use by the reporting employee was a contributing factor to the reported injury or illness
 - Individualized assessment now necessary

PHASE 2 REQUIREMENTS

- Take effect January 1, 2017
- Covered employers must begin electronic submission of injury and illness reports
- Employers with 250 or more employees that are currently required to keep injury and illness records must electronically submit information to OSHA
- Employers with more than 20 but less than 249 employees that are classified in certain industries with historically high rates of injuries must electronically submit information
 - High hazard industries include construction, manufacturing, wholesale trade, forestry, agriculture, fishing, hunting, utilities
 - There are an additional 60 smaller industry groups required to e-file, including department and grocery stores, most residential health care facilities, freight trucking, warehousing, school and employee bus transportation and the charter bus industry

PHASE 2 REQUIREMENTS (CONT.)

- Reporting phase-in
 - First year: information from OSHA form 300A (summary of work-related injuries and illnesses) is due from all targeted employees by July 1, 2017
 - Second year: employers with 250 or more employees must also electronically submit information from forms 300 (log of work-related injuries and illnesses) and 301 (injury and illness incident report) by July 1, 2018
 - Third year: the reporting date is moved up to March 2, 2019 for all filings and remains the deadline for subsequent years
- OSHA will post establishment-specific injury and illness data collected under the record-keeping rule on its public website
- In addition to mandatory electronic filing, OSHA can require electronic submissions from employers who receive notification from OSHA to do so

OSHA FORMS

- Can be found at OSHA.GOV
- Are not easily printable

OSHA WHISTLEBLOWER PROTECTION PROGRAM

- OSHA enforces >20 whistleblower statutes
- Whistleblower Complaint Form
 - Can be found at www.whistleblowers.gov
 - Complaints can be filed with OSHA and State counterpart
 - Complaints can be filed in person, over telephone or online

BEST PRACTICES PRIOR TO NOVEMBER 1, 2016

- Create (or amend) an injury and illness reporting procedure
- Review all current safety policies and current safety programs
 - Insure they do not provide a disincentive to employees reporting injuries and illnesses
 - Policies must expressly prohibit discrimination or retaliation against employees who report injuries or illnesses

BEST PRACTICES PRIOR TO NOVEMBER 1, 2016 (CONT.)

- Revise post-injury drug testing policy
 - Eliminate automatic post-injury drug testing
 - Replace with a policy requiring individual assessment of each employee and accident
- Train employees on policy and reporting procedures; emphasize non-discrimination or retaliation
- Train supervisors how to identify impaired employees and how to document accidents that may trigger OSHA reporting

BEST PRACTICES AFTER JANUARY 1, 2017

- Determine if your company falls under any level of the reporting requirements
- Determine what reports need to be electronically filed and when
- Establish procedures for the gathering and annual electronic filing of the necessary reports
- Calendar the dates when necessary reporting of particular reports are due
- Train employees on how to collect and file/report injury and illness data

RULES ON THE HORIZON

All in pre-rule stage:

- Noise in construction rules
 - DOE and National Institute for OSHA conclude that a significant percentage of construction workers have suffered hearing loss
 - OSHA is considering what may be necessary to create effective protections
- Preventing workplace violence in health care and social service jobs
 - Workers suffer over 52% of all work place violence incidents
 - Workplace violence has increased 64% between 2005 and 2014
 - Numerous unions have joined forces to petition for new workplace violence standards

RULES ON THE HORIZON (CONT.)

- Occupational exposure to styrene
 - Due to wide use and applications, hundreds of thousands of employees are potentially exposed
 - Documented health effects of occupational exposure is catalyst for OSHA review of new controls and regulations
- Blood lead level for medical removal
 - OSHA exploring regulatory options to lower blood leads in affected workers
- Updating requirements for the selection, fit testing and use of hearing protection devices (“HPD”)
 - OSHA concludes that HPD requirements in general industry and construction are inconsistent and outdated
 - The goal is to harmonize regulations to provide more consistency and use newer technologies to assure adequate protections

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QUESTIONS?



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THANK YOU

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