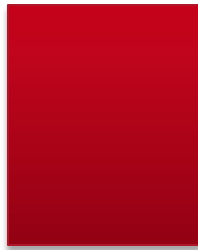
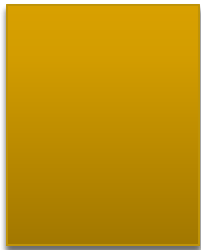


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OSHA INJURY AND ILLNESS RECORDKEEPING AND REPORTING – PENDING REGULATION

Pulp and Paper Safety Association Webinar

November 19, 2014

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The Big Picture

- More rulemaking activity by OSHA than expected
- Big surprise: Much of it in area of recordkeeping and reporting
- “Subregulatory agenda and activity” continues
 - President’s vow to use executive authority to advance agenda (end-run Congress and rulemaking)
 - Nothing new for OSHA, e.g., 2013 outsider walk-around “interpretation”; 2013 small farm employer “guidance”; 2012 safety incentives program “ban”; 2011 noise control “interpretation”

Recordkeeping

- Three proposed rules
- First would update recordkeeping requirements based on illness/injury rates and NAICS (not SIC).
- Second would “clarify” employer’s ongoing duty to maintain accurate records.
 - No expiration period identified; in past, OSHA has sought five-year “look-back” period (based on five-year document retention requirement of current recordkeeping rule.
 - Response to *Volks Constructors (AKM)* decision

Recordkeeping (Cont'd)

- Third would add column to 300 Log for recording/tracking of musculoskeletal disorders – “ergonomics reinvented”.
 - Rider to FY 2012 appropriations bill blocked further action.
 - No rider to most recent appropriations bills.
 - But recent regulatory agenda refers matter to “long term action” list – no action at least for next 12 months.

Injury/Illness Reporting – New Rule

- Published September 11, 2014; effective January 1, 2015.
- Requires reporting to OSHA within 24 hours of hospitalization of one (versus 3) employee, amputation or loss of eye.
- Surprise! New provision (not included in proposed rule) requires publication by OSHA of all such reports – shaming.
- Likely to increase frequency of inspections based on reports because of perceived accountability of OSHA.
- Also changes criteria for low-risk industry exemptions from reporting.

Injury/Illness Reporting – Proposed Rule

- “Improved Tracking of Workplace Injuries and Illnesses” – notice of proposed rulemaking published November 2013
- Would require quarterly reporting (250 or > employees) or annual reporting (20 or > employees) of all 300 Log/301 Form data.
- Would require OSHA to publish raw data on its website.
- Clear goal: shaming

Injury/Illness Reporting – Proposed Rule (Cont'd)

- Problems
 - Not authorized by 1910.1904 or OSHA Act.
 - Would disclose confidential information on employers and employees and proprietary information.
 - Number of employees, hours worked
 - Employee-identifying information (small communities)
 - Sensitive/privacy information

Injury/Illness Reporting – Proposed Rule (Cont'd)

- Compromise public safety
 - Location of explosives production, ammunition
 - Location of chemical manufacture
- Result in competitive injury.
 - Location of employers' facilities (defense munitions, sensitive pharmaceuticals) => theft, sabotage)
 - Size of workforce => understanding of volume of production
 - Processes => potential hostile takeover, sabotage, theft of IP

Injury/Illness Reporting – Proposed Rule (Cont'd)

- Would not provide tools for understanding/use of raw data.
 - Data need context (GM v. “Mom and Pop Grocers”)
 - Inference of “unsafe” workplaces unreliable, potentially damaging to recruitment, awards of work, etc.
- No allowance for correction of data (work-relatedness; DAFWIs; DARTs; ...).

Injury/Illness Reporting – Proposed Rule (Cont'd)

- Present system of recordkeeping is “no-fault”.
- OSHA recognizes that many injuries/illnesses are “beyond the employer’s control” (Final Recordkeeping Rule, 66 Fed. Reg. at 5934 (2001))
- Thus, “no fault” attached to injuries recorded (exchange for “geographic presumption” of relatedness *solely* for recordability purposes)
- Proposed rule abandons no-fault principle/foundation of current system.

Injury/Illness Reporting – Proposed Rule (Cont'd)

- Will give negative incentive for employers to record accurately/comprehensively, as required/designed by no-fault system.
- No paper submissions allowed – big problem for small businesses not as tech-savvy.
- Massive volume of data v. limited resources of OSHA to vet, purge of privacy information, publish accurately/timely.

Injury/Illness Reporting – Proposed Rule (Cont'd)

- On August 14, 2014, OSHA published “supplemental” NPRM.
- Subject of already-threatened litigation
- Amendment: Require employers to inform employees how to report injuries/illnesses.
- Amendment: Prohibit employers from implementing “unreasonably burdensome requirements” for reporting.
 - Attack on safety incentive programs.
 - Allow for retaliation investigations without complaint filing.