

Electronic Alert

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OSHA Now Enforcing Rule Tracking Workplace Injuries and Illnesses By Amy L. Angel and Nicole C. Elgin

The Occupational Safety and Health Administration (OSHA) has authority to enforce its final rule to Improve Tracking of Workplace Injuries and Illnesses as of December 1 this year. A challenge to the final rule in the U.S. District Court for the Northern District of Texas had delayed the initial August 2016 enforcement date. However, on November 28th, District Judge Lindsay denied the temporary injunction finding that the plaintiffs had not shown that the rule would cause irreparable harm. While there are still many pending challenges to the final rule, OSHA now has full authority to begin enforcing the rule's anti-retaliation provisions.

We explained the practical impact of this rule's anti-retaliation provisions on employers in our [e-alert](#) this summer and highlighted OSHA's ability to cite employers for violations even when an employee has not filed a complaint in our [e-alert](#) this fall. Also, on November 18, 2016, Oregon adopted changes to its State Plan to conform to the new federal requirements. Oregon's new rule requires employers to establish reasonable procedures for reporting work-related injuries and illnesses. Similar to the new federal rule, an employer's procedure is not reasonable "if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness." OAR 437-001-0070. Further, employers must inform all employees of the procedure and that employees have the right to report work-related injuries free from discrimination or retaliation. Oregon's State Plan goes into effect May 1, 2017, and includes similar electronic reporting requirements to the federal rules.

Three things that employers should do today:

1. **Have a clear procedure.** Make sure that you have a clear work-related injury reporting procedure. Explicitly notify all employees that they have the right to report work-related injuries and will not be discriminated or retaliated against for their reporting.
2. **Check your handbook.** Employers may no longer have blanket post-injury drug testing or safety-incentive policies that would discourage accurate reporting. Revisit handbook policies that have automatic post-accident testing procedures. Unless another federal law requires the employees to be drug-tested, like Department of Transportation regulations, modify the policy so that testing is only required after the company evaluates whether there's a reasonable possibility that drug use contributed to the accident or injury.
3. **Prepare to report.** Once Oregon's new rule takes effect, employers will be required to e-submit injury and illness data from current OSHA injury and illness forms. The types of forms that the new rules require depend on the size of the employer, but most employers will have to file by July 1, 2017. OSHA plans to publicly disclose some of the injury data by industry to encourage employers to improve workplace safety.