

OSHA Announces Rule Clarifying Workplace Injury Reporting That Imposes 'Continuing Obligation' on Employers to Maintain Injury Records for Five Years



On Dec. 16, 2016, the Occupational Safety and Health Administration (OSHA) issued the latest major record-keeping rule change that the agency had set its sights on during the final year of the Obama administration. Pursuant to the new rule, an employer has a "continuing obligation" to make and maintain accurate records of each recordable injury and illness. As a result, employers who fail to properly record workplace injuries and illnesses can be issued citations for unrecorded injuries and illnesses for up to the full five-year record-retention period for which such records must be maintained.

The final rule will become effective on Jan. 18, 2017.

OSHA claims that the new rule merely clarifies the status quo. OSHA Administrator David Michaels said in a Dec. 16, 2016, statement that the rule "simply returns us to the standard practice of the last 40 years." OSHA further claims that the final rule itself adds no new compliance obligations, and does not require employers to make records of any injuries or illnesses for which records are not already required.



Final Rule Clarifies Continuing Obligation

The final rule clarifies that if an employer fails to record an injury or illness within 7 days, **the obligation to record continues on past the 7th day, such that each successive day where the injury or illness remains unrecorded constitutes a continuing "occurrence" of the ongoing violation.** If the employer records the injury on some later day than the 7th day, the violation ceases to occur at that point, and any citation would need to be issued within 6 months of the cessation of the violation.

The final rule clarifies that **an employer cannot avoid the five-year maintenance requirement by failing to make the record in the initial 7 days;** rather, the obligation to make the record, **for both the OSHA 300 Log as well as the OSHA 301 Incident Report,** continues throughout the 5-year maintenance period even if the employer fails to meet its initial obligation.

What do you need to do? Keep "accurate" records of workplace injuries. It is as simple as that.