

OSHA and The Trump Administration: The First 200 Days

By Michael Rubin

Any new presidential administration is likely to bring a new philosophy, vision, and focus to a variety of issues—including workplace safety and health. More than 200 days into the Trump presidency, we take a look below at some of the top developments in OSHA thus far in 2017.

OSHA'S VOLKS RULE OVERTURNED

The Volks rule—formally the “Clarification of Employer’s Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness”—was issued on December 19, 2016, during the final days of the Obama Administration. OSHA claimed the rule was created to clarify that employers have an ongoing obligation to make and maintain accurate injury and illness records (OSHA 300 logs) and that OSHA had 5.5 years to cite an employer for failing to do so. Opponents of the rule argued that the rule would not only fail to improve workplace safety, but also reflected an unlawful power grab since the rule sought to circumvent a prior court decision that directly undercut OSHA’s longstanding position on the issue. On April 4, 2017, President Trump signed a resolution overturning the rule pursuant to the Congressional Review Act (CRA). As a result, OSHA now has only 6 months from the date of any claimed recording violation to cite an employer (e.g., for either failing to record or incorrectly recording an occupational injury or illness). Employers, however, are still required to maintain their injury and illness records for 5 years.

ELECTRONIC REPORTING DEADLINES EXTENDED

The date by which certain employers are required to electronically submit their 2016 OSHA form 300A data has been extended from July 1, 2017, to December 1, 2017. This requirement is pursuant to OSHA’s rule to improve the tracking of workplace injuries and illnesses—issued by OSHA in May 2016. The electronic reporting requirements of this rule apply to employers with 250 or more employees, as well as employers with 20-249 employees in certain high-hazard industries.

BERYLLIUM RULE

OSHA’s new beryllium rule took effect on May 20, 2017, and employers must comply with most of the rule’s requirements by March 12, 2018. However, employers have an additional year—until March 11, 2019—to provide required change rooms and showers, and an additional 2 years—until March 10, 2020—to implement engineering controls. Currently, however, the rule is undergoing changes in a White House review.



SILICA RULE

OSHA’s new silica rule, issued in March 2016, contains separate standards for the construction industry and general industry/maritime industries. Among other things, the rule cuts the respirable silica permissible exposure limit (PEL) from 100 µg/m³ for an 8-hour time weighted average to 50 µg/m³. In order to comply with the rule, employers can either use a control method provided by OSHA in “Table 1” of the construction standard, or they can measure workers’ exposure to silica and independently decide which dust controls to implement. In April 2017, OSHA extended the enforcement date of the rule from June 23, 2017, to September 23, 2017.

UNION WALK AROUND LETTER RESCINDED

In early 2013, OSHA issued an interpretation letter stating that persons affiliated with a union or a community organization may serve as a walk around representative on behalf of employees during an inspection—even if the inspection is occurring on a non-union site. The interpretation letter was challenged in the U.S. District Court for the Northern District of Texas, and in April 2017 (in the course of the legal challenge), OSHA agreed to rescind the interpretation letter. As a result, the so called “union walk around rule” no longer reflects OSHA policy.

As the Trump presidency continues and deadlines pass for OSHA rule enforcement, additional changes and/or guidance can be expected to be announced—including relating to other hot-button issues such as post-accident drug and alcohol testing. ■

ABOUT THE AUTHOR

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