

OSHA Recordkeeping Rule Starts White House Review

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Practices

Workplace Safety and Health

The White House is reviewing a proposed worker safety rule from the Occupational Safety and Health Administration that aims to expand the requirement on how long employers must maintain accurate records of worker injuries and illnesses.

The White House Office of Management and Budget received a final rule on October 14, 2016, and its staff has to complete its review within 90 days. The proposal ([RIN:1218-AC84](#)) would amend the OSHA recordkeeping regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation. The duty to make and maintain an accurate record of an injury or illness continues for as long as the employer must keep and make available records for the year in which the injury or illness occurred. The duty does not expire if the employer fails to create the necessary records when first required to do so.

Under the proposed rule, employers would have to keep accurate records as long as required for the year in which the incident occurred. The statute of limitations would increase from six months to five years after an incident occurs.

Business groups say that the proposal is an attempt to get around a six-month statute of limitations established in a 2012 court ruling. The U.S. Court of Appeals for the District of Columbia Circuit ruled in *AKM LLC v. Sec'y of Labor (Volks II)*, 675 F.3d 752 (D.C. Cir. 2012), that OSHA was required to issue citations for recordkeeping violations within six months of when the employer fails to record the event.

On July 29, 2015, OSHA issued a [Notice of Proposed Rulemaking](#), "Clarification of Employer's Continuing Obligation to Make and Maintain Accurate Records of Each Recordable Injury and Illness."

Jackson Lewis is available to assist clients with recordkeeping and other federal safety compliance obligations.

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