

Senate Votes to Repeal OSHA ‘Volks’ Recordkeeping Rule

April 3, 2017

In a move that President Donald Trump is expected to approve, the Senate has voted to repeal a Labor Department rule that allows the Occupational Safety and Health Administration (OSHA) to sanction employers for “failing to make and maintain injury and illness records” beyond the six-month statute of limitations set out in the Occupational Safety and Health Act.

In a 50-48 vote on March 22, 2017, the Senate adopted “Clarification of Employer’s Continuing Obligation to Make and Maintain Accurate Records of Each Recordable Injury and Illness” (H.J. Res. 83) to nullify the Obama Administration rule. Informally named after *AKM LLC d/b/a Volks Constructors v. Sec’y of Labor*, 675 F.3d 752 (D.C. Cir. 2012), the “Volks Rule” was the regulatory response to the U.S. Court of Appeals for the District of Columbia ruling that OSHA could *not* issue citations for failing to record an injury or illness beyond the six-month statute of limitations set out in the Act.

OSHA officials proposed the Volks Rule on July 29, 2015, and finalized it in December 2016. The Rule took effect in January 2017, before the end of the Obama presidency.

The Volks Rule stipulated that recordkeeping requirements are a “continuing obligation” and effectively permitted OSHA to cite employers for failing to record work-related injuries and illnesses during a five-year retention period, instead of the previous six-month statute of limitations.

OSHA said the Rule was designed to “clarify that 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.”

With the change in administration and Republican control of Congress, House lawmakers argued that OSHA had overreached its regulatory responsibilities and introduced legislation to repeal the Volks Rule. On March 1, 2017, the House approved the legislation.

The Senate adopted the resolution under the Congressional Review Act, a law that empowers Congress to use an expedited legislative process to review new federal regulations issued by government agencies and overrule a regulation with the passage of a joint House and Senate resolution.

The Trump Administration had indicated the President supported the change. In a [statement issued on February 28, 2017](#), the White House said the Administration supported the legislation, noting, “The Administration is committed to reducing regulatory burdens on America’s businesses, and this rule imposes costs on employers resulting from continuing recordkeeping obligations.”

It added, “If this bill were presented to the President in its current form, his advisors would recommend that he sign it into law.”

Jackson Lewis attorneys are available to assist employers maintain their records in compliance with federal and state laws.

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