

OSHA Developments – More Good News For Employers

October 30, 2017 | [Employment Lessons, Labor And Employment](#)



Mark S. Kittaka
Partner

As I [mentioned in May](#), there have been a number of positive regulatory or enforcement developments for employers, including (1) the repeal of the *Volks* rule, which would have changed the statute of limitations for OSHA recordkeeping violations from six months to more than five years, and (2) the rescinding of the memo establishing union walk-around inspection rights even in a non-union setting. **Electronic Recordkeeping** The good news for employers continues with developments related to the electronic recordkeeping rule and the associated controversial non-discrimination provisions that would prohibit blanket post-accident drug testing. Here's the update: Originally, OSHA's deadline for employers to submit OSHA 300A summaries was July 1, 2017. After lawsuits were filed challenging the legality of these regulations, OSHA agreed to delay the implementation date by [filing a Notice of Proposed Rulemaking](#) to delay the compliance date until Dec. 1. In response to the challenge to the entire rule as being in violation of the Administrative Procedure Act (APA), OSHA chose not to fight the lawsuit, but instead consented to a stay of proceedings by indicating that it may reconsider their position on the rule itself. The proposed rule states that "OSHA also intends to issue a separate proposal to **reconsider, revise, or remove other provisions** of the prior final rule." Other than the actual electronic submission of injury and illness logs, the other items relate to the non-discrimination provisions, which could apply to mandatory post-accident drug testing, the prohibition on financial safety incentives, and the expansion of "whistleblower-type" remedies from a 30-day statute of limitations to six months (without a signed complaint). Therefore, while the electronic recordkeeping rule and associated non-discrimination provisions are still technically in effect, it does not appear to be a priority for enforcement for this administration. In fact, as noted in the proposed rule, it appears they will be initiating formal rulemaking to "reconsider, revise or remove" much of this controversial rule. Stay tuned for further updates on this rule. **The Caveat** Lawyers always have disclaimers. While OSHA has shown some positive movement on the regulatory front, it does not mean it has stopped inspecting facilities. In fact, for the first six months of 2017, inspections are on pace to match or exceed the prior year's numbers. Employers still need to be vigilant in the creation, administration and implementation of their safety programs, employee training and the enforcement of safety rules.

RELATED PRACTICE AREAS

Labor and Employment
Management and Employee Training
Workplace Counseling
Workplace Culture 2.0

RELATED TOPICS

Electronic Recordkeeping
OSHA
Volks rule