New Enforcement Deadline Curtails OSHA's Ability to Crack Down on Recordkeeping Violations



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SCENARIO

- January 1 to June 30, 2016: Determined to cut recordables, the new foreman of Hyde N. Seek Construction deliberately fails to keep OSHA logs or submit OSHA 301 reports for 3 injuries that meet OSHA recordability and reportability criteria.
- June 1, 2017: An OSHA inspector discovers the violations.

QUESTION

Can OSHA cite Hyde N. Seek for recordkeeping violations?

ANSWER

No. Until very recently, the answer would have been yes. But on April 3, 2017, the rules changed.

EXPLANATION

OSHA Recordkeeping Regulations (Section 1904.33) require employers to keep accurate illness and injury records (that is, Form 300 Logs, Form 300A Summaries and Form 301 Reports) over a 5-year retention period. OSHA has a 6-month window to cite employers for recordkeeping violations.

KEY QUESTION

What the Regulations (at least in their original version) didn't explain is exactly when the 6-month window begins to run.

THE PREVIOUS RULE

In 2012, a federal court ruled that the 6-month window starts running when the violation actually occurs. OSHA responded by changing the rule to provide that OSHA recordkeeping violations are “ongoing” and that the window period begins when OSHA first discovers the violation.

THE NEW RULE

On April 3, 2017, the new President signed a congressional action (H.J. Res. 83) nullifying the OSHA modification and restoring the 2012 court ruling that the 6-month window begins when the employer commits the violation.

PRACTICAL IMPACT

The new rule doesn’t change the substance of OSHA recordkeeping requirements. But in giving OSHA only 6 months to uncover violations, it makes the rules much harder to enforce (as illustrated by the scenario above).

And that’s not just speculation. After the 2012 court ruling establishing the 6-month window as starting with the violation date, OSHA recordkeeping citations fell a precipitous 75%! Citations quickly regained their normal levels after OSHA changed the window to 6 months from the date of discovery by an inspector.

New resources available for Safe + Sound Week
To help employers participate and plan events for Safe + Sound Week, June 12-18, OSHA has updated its webpage with sample activities, social media resources, and tools. The page also features an interactive map of events occurring across the country. Employers are encouraged to host events and activities that showcase the core elements of an effective safety and health program – management leadership, worker participation, and finding and fixing workplace hazards. Visit the Safe + Sound Week page for more information and to register events.

OSHA to delay enforcement of crystalline silica standard in the construction industry
OSHA announced it will delay in the enforcement of the crystalline silica standard in construction from June 23 to Sept. 23. The three-month delay will allow for more outreach to be conducted and guidance provided to employers. The compliance deadlines for general industry and maritime, set for June 2018, remain unchanged. For more information, read the news release.

NIOSH online network helps healthcare facilities address bloodborne pathogens and other hazards
The National Institute for Occupational Safety and Health has established a web-based injury and exposure monitoring system available at no cost to healthcare facilities. This secure system enables participating facilities to analyze worker injury and exposure data that they already collect. Trends for traumatic injury and hazardous exposures are visualized using a chart function. The system allows facilities to track five common work-related injuries and exposures in healthcare: sharps injuries; blood and body fluid exposure; slips, trips, and falls; patient handling injuries; and workplace violence.