



OSHA PROPOSES NEW INJURY AND ILLNESS REPORTING RULES

By: H. Carlton Hilson

On August 14, 2014, the Occupational Safety and Health Administration ("OSHA") issued a supplemental notice of proposed rulemaking regarding electronic submission of injury and illness records. OSHA had originally published the notice of proposed rulemaking in November 2013, in which the agency had proposed, among other things, to require employers to submit OSHA 300 logs and 301 injury reports electronically on a quarterly basis. Most importantly, OSHA's November 2013 proposed rule would make such injury and illness reports publically available online.

In its supplemental proposal, OSHA proposes rules changes in areas that could significantly affect many employers' workplace injury and illness reporting policies and greatly expand OSHA's reach and scope in enforcing the anti-retaliation provision of Section 11(c) of the OSH Act. Specifically, OSHA is seeking comments on (1) whether employers should be required to inform their employees of their right to report injuries and illnesses; (2) whether requiring employers to implement injury and illness reporting programs would be reasonable and not unduly burdensome; and (3) whether employers should be prohibited from disciplining employees for reporting injuries and illnesses.

Though the supplemental notice of proposed rulemaking does not propose any specific rule changes, the agency seeks comments on the following subtopics which may be areas for potential rule changes:

- 1) Banning mandatory drug testing requirements following injury and accident reports absent reasonable suspicion of use;
- 2) Prohibiting employer rules which require employees to report injuries and illnesses promptly;
- 3) Prohibiting requirements that employees report injuries and illnesses to designated off-site individuals in person;
- 4) Making it unlawful to terminate or discipline employees who are injured because of their own failure to abide by an employer's safety rules;
- 5) Prohibiting the termination or discipline of employees for repeated injuries, illnesses, or safety rules violations; and
- 6) Prohibiting enforcement of vague safety rules like "situational awareness" and "work carefully" only after injuries.

The sixty (60) day comment period began on August 14, 2014, and lasts until October 14, 2014. If enacted, the new rules could go into effect as early as March 1, 2015.

We will continue to monitor OSHA's efforts to implement these new rules and requirements and will keep you updated.

If you have any questions or need further information, please contact:

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or your Burr & Forman attorney with whom you regularly work.