

OSHA'S New Emphasis on Recordkeeping

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Get ready for the inspectors from the Occupational Health and Safety (“OSHA”) to come knocking on your company's door. OSHA has announced a new program that will be sending inspectors out to industries believed to be underreporting workplace injuries and illnesses to make sure their recordkeeping complies with the law. Here are the details of the new program.

On October 1, 2009, in response to the perceived underreporting of occupational injuries and illnesses, the U.S. Department of Labor's Occupational Safety and Health Administration (“OSHA”) implemented a new National Emphasis Program (“NEP”) on recordkeeping. Although Section 8(c) of the Occupational Safety and Health Act of 1970 requires companies “to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses,” various studies and reports reveal severe underreporting by employers of accidents and illnesses in the workplace. OSHA hopes the recordkeeping NEP will assist it in assessing and increasing the accuracy of injury and illness information reported by businesses.

The NEP took effect on September 30, 2009 and will continue for one year from the date of inception. The program will target companies in high risk industries with a historically high rate of injury or illness. OSHA's Office of Statistical Analysis will select employers belonging to a group of twenty-one targeted industries identified as having high rates of missed work, restricted work activity, or job transfers. These industries include animal slaughtering, air transportation, foundries, concrete pipe manufacturing, soft drink manufacturing, nursing care facilities, pet and pet supply stores, and couriers. In addition, the NEP will focus on companies with at least forty employees.

The NEP requires OSHA inspectors to review a broad selection of company records, including those records pertaining to workers compensation claims, medical incidences, insurance claims, payroll, absentee logs, safety incidences, alternate duty rosters, first-aid documents, disciplinary reports related to injury and illness, and even documents stored offsite and at medical clinics. OSHA will conduct interviews of managers and employees, with specific focus on employees in higher risk categories, and of first-aid and medical professionals involved in treatment; and will question the recordkeeper concerning knowledge of reporting requirements and the accuracy of the company's recordkeeping. OSHA will also examine company policies for any evidence that the company is in any way discouraging employees from reporting injuries or illnesses, including penalties, intimidation, or rewards programs.

Using this information, OSHA will independently reconstruct the company's OSHA 300 forms, and will compare the reconstructed forms with the forms actually maintained by the company to identify any discrepancies. Citations will be issued for any recordkeeping violations.

Given OSHA's heightened emphasis on recordkeeping violations, employers should examine and correct any deficiencies in their recordkeeping procedures, including their recordkeepers' knowledge of OSHA reporting requirements. Further, because the NEP requires a mandatory site inspection, OSHA's focus may extend beyond recordkeeping. Employers should be mindful that any unsafe working conditions observed in plain view during an recordkeeping inspection may result in citations.

For more information on OSHA issues, contact Jim Goh at jgoh@hollandhart.com or (303) 295-8406.

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