



# California Enacts New Law to Respond to Trump Administration OSHA Changes

Insights

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*On September 19, Governor Brown signed AB 2334 (Thurmond) to make various workplace safety and health changes to California law, largely in response to recent activity by the Trump Administration. Among other things, AB 2334 requires Cal/OSHA to monitor federal electronic recordkeeping requirements and, depending on federal action, to convene an advisory committee to evaluate how to move forward with a state-law version of the proposed recordkeeping requirements. In addition, AB 2334 resurrects the so-called “Volks Rule,” which provides for a longer statute of limitations for record retention violations. AB 2334 goes into effect on January 1, 2019.*

Add this one to the list of bills by which “California responds to the Trump Administration.”

Back in 2016, the Obama Administration federal Department of Labor adopted a new electronic recordkeeping and reporting procedure known as the Improve Tracking of Workplace Injuries and Illnesses rule. However, the Trump Administration recently suspended the July 1, 2018 deadline for the electronic submission of OSHA 300 log and 301 form (first report of injury) information for worksites with more than 250 employees and announced a proposed rule to revise and relax the increased reporting requirements.

In an effort to “resist” this federal action, Assembly Bill 2334 (Thurmond) requires Cal/OSHA to “monitor” rulemaking at the federal level. If it determines that federal OSHA has “eliminated or substantially diminished” the electronic recordkeeping proposal, Cal/OSHA is required to convene an advisory committee within 120 days to “evaluate how to implement the changes necessary to protect the goals” of the proposed federal rule as issued by the Obama Administration in May 2016.

Therefore, it seems clear that California is setting itself up to impose its own version of the proposed federal rule should the Trump Administration ultimately relax the electronic reporting proposal.

AB 2334 also contains a provision that seeks to resurrect a statute of limitations rule related to recordkeeping requirements known as the “Volks Rule.” The rule received its nickname from a D.C. Circuit Court case that held that federal OSHA could not cite employers for failing to record workplace injuries or illnesses if the violation took place more than six months before the citation was issued. However, in the waning days of the Obama Administration, federal OSHA adopted what amounted to a five-year statute of limitations for such violations, stating that the duty to record an

injury or illness continues for the full five-year record retention period under federal law. In 2017, however, President Trump signed a resolution pursuant to the Congressional Review Act that revoked this so-called “Volks Rule.”

Following the D.C. Circuit Court case mentioned above, the Cal/OSHA Appeals Board announced in a decision that it would similarly interpret the “occurrence” statute of limitations as barring any citation for failure to report an injury which occurred more than 6 months after the violation. *Key Energy Services* (DAR-15-0255-0256).

AB 2334 amends California law to largely revert to the Obama Administration “Volks Rule” by specifying that a violative “occurrence” for record retention violations continues until it is corrected, Cal/OSHA discovers the violation, or the duty to comply with the requirement is no longer applicable. In other words, a failure to record an injury or illness would be deemed a “continuing violation” until discovered or corrected.

### **Next Steps**

AB 2334 goes into effect on January 1, 2019.

With respect to the provisions related to the proposed federal electronic reporting rule, California employers will have to adopt a “wait and see” approach. Depending on the final action taken by the Trump Administration, Cal/OSHA could be required to form an advisory committee to respond. However, any reporting changes subsequently adopted would require further legislative or regulatory activity. We’ll continue to monitor developments at the state and federal level, and keep you apprised of any further developments taken by Cal/OSHA.

With respect to the changes related to the longer statute of limitations period for alleged record retention violations, California employers should expect to see citations issued by Cal/OSHA for such violations going back beyond the normal six-month statute of limitations period. Therefore, employers should review their recordkeeping and retention processes for workplace injuries or illnesses, especially their OSHA 300 logs, and make any changes necessary to ensure compliance. California employers are likely to see aggressive enforcement activity from Cal/OSHA seeking to “reach back” years into the past for these types of recordkeeping violations.

For more information about this new law, please contact your regular Fisher Phillips attorney, any member of our [Workplace Safety and Catastrophe Management Practice Group](#), or one of the attorneys in any of our California offices:

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*This article provides an overview of a specific state law change. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

## ***Related People***

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