



OSHA Reporting Freeze Continues As Court Dismisses Challenge

Insights

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A federal judge recently dismissed a lawsuit alleging that the Occupational Safety and Health Administration wrongfully delayed the compliance deadline for its own recordkeeping reporting regulation. The court said that the agency properly rolled back an Obama-era rule that would have required it to collect detailed electronic workplace injury and illness information from employers across the country. Several other challenges still exist, however, so employers aren't completely out of the woods – but this decision is a welcome development.

Quick Background

In 2016, the Obama-era OSHA amended a standard (29 C.F.R. part 1904) that aimed to require employers with 250 or more employees to electronically submit certain workplace-injury data (*i.e.*, the OSHA 300 Log and 300A Summary) — a burdensome task for employers with establishments of any meaningful size. This new rule was slated to go into full effect on July 1, 2018.

But in May 2018, the agency – under new leadership – [gave good news to employers](#) about the rule. It suspended the deadline and proposed a rule change that would eliminate the 2016 requirement for the 300 Log. As anticipated, on January 25, 2019, OSHA promulgated a final rule [eliminating the 300 Log electronic filing requirement](#).

Several public health advocacy groups filed a legal challenge to OSHA's actions. They had intended to use the electronically available data that was to be collected under the 2016 regulation. They argued that OSHA failed to use proper notice-and-comment procedures that they believed were necessary to alter the rule's requirements.

Court: OSHA Acted Properly, Freeze Can Continue

Last week, U.S. District Court for the District of Columbia Judge Timothy J. Kelly dismissed the lawsuit as moot. He said that the agency removed the reporting requirement upon concluding that the 2016 rule wasn't "sound policy" to begin with, so he didn't have jurisdiction over the dispute. He noted therefore that OSHA's decision to publish a final rule striking the proposed 2016 was not his to remedy. *Pub. Citizen Health Research Grp. v. Pizzella*, No. 1:18-cv-01729-TJK, 2019 WL 4711457, at *4 (D.D.C. Sept. 26, 2019).

What's Next?

While you must still (a) maintain the OSHA 300 Log and Form 301 onsite for OSHA to review, and (b) post the OSHA Form 300A at your establishments beginning February 1 of each year, 300 Log injury

information does not have to be submitted electronically to OSHA. As a result of this case, at least for now, third parties will not be able use this data to publicly shame you or take aim at you with legal challenges using out-of-context workplace-injury statistics.

The parties originally challenging OSHA's moves, however, have not given up their pursuit of this data. Along with several states, they have challenged OSHA's 2019 final rule in at least two other lawsuits. Their main allegation: that OSHA failed to provide a reasoned explanation for eliminating the electronic-filing requirements. *See Pub. Citizen Health Research Grp. v. Acosta*, No. 1:19-cv-00166-TJK, ECF No. 1 at 2 (D.D.C. filed January 25, 2019); *New Jersey v. Acosta*, No. 1:19-cv-00621-TJK, ECF No. 1 at 3-4 (D.D.C. filed March 6, 2019).

We will continue to follow these two cases and provide updates, as both have pending motions sitting before the court that could provide the final outcome in this dispute.

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