

FEDERAL APPEALS COURT STRIKES DOWN OSHA'S WORKPLACE MENTAL ILLNESS RECORDKEEPING RULE: 7 STEPS FOR EMPLOYERS

Insights
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Federal Appeals Court Strikes Down OSHA's Workplace Mental Illness Recordkeeping Rule: 7 Steps For Employers

A recent federal appeals court decision knocked down an agency rule requiring employers to record certain work-related mental illnesses on their OSHA 300 Logs. The 5th Circuit's July 21 opinion in *Exxon Mobil v. OSHA* concluded that the agency exceeded the authority Congress granted under the Occupational Safety and Health Act when it passed this regulation. While this decision narrows OSHA's recordkeeping authority, you should not read it as diminishing the importance of workplace mental health – and remain aware of state-related obligations that may still require you to record such illnesses. What do you need to know about the case and what seven steps should you take at your workplace as a result?

What Happened?

The case arose after a catastrophic refinery explosion in Texas that required employees to assist with emergency response efforts. One employee later received multiple diagnoses of post-traumatic stress disorder (PTSD) from healthcare providers, each attributing the condition to the workplace incident.

The employer ultimately declined to record the diagnosis on its OSHA 300 Log after obtaining an additional medical opinion. OSHA cited the employer for failing to record the

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illness, and an administrative law judge affirmed the citation and imposed a monetary penalty. After the Occupational Safety and Health Review Commission allowed that decision to become final, the employer sought review in the 5th Circuit.

Court's Opinion: OSHA Lacked Power to Pass Rule

The 5th Circuit ruled in favor of the employer and vacated OSHA's rule requiring employers to log mental health illnesses on OSHA 300 logs. It framed the dispute as one of statutory authority, not workplace mental health.

The court examined Section 8(c)(2) of the Occupational Safety and Health Act, which authorizes OSHA to require employers to maintain records of work-related "deaths, injuries and illnesses." The court concluded that, when read in context, Congress intended that provision to address **physical** injuries and illnesses rather than **mental health** conditions.

In reaching that conclusion, the court emphasized several points:

- The statutory language surrounding "illnesses" focuses on concepts such as first aid, loss of consciousness, restricted work, and job transfer, all of which the court viewed as addressing physical injuries.
- Other portions of the Act's recordkeeping framework likewise focus on physical workplace hazards, toxic substances, and harmful physical agents.
- Historical dictionary definitions available when Congress enacted the OSH Act did not persuade the court that "illnesses" was commonly understood to include mental illnesses in this context.
- Applying the Supreme Court's recent administrative law decisions putting more power in the hands of courts, the 5th Circuit concluded that OSHA had identified a plausible interpretation of the statute, but not its best interpretation.

Accordingly, the 5th Circuit vacated both OSHA's mental illness recordkeeping regulation and the citation issued in the case.

Where Does the Decision Apply?

The court's decision vacated the underlying regulation itself, which means that federal OSHA no longer has a valid regulatory basis to cite any employer for failing to record work-related mental illness regardless of where that employer sits. That means that the ruling doesn't just apply to employers in the 5th Circuit's jurisdiction (Texas, Louisiana, and Mississippi) but to businesses from coast to coast.

But about half the states in the US have state OSHA plans of their own, and most state-plan states have adopted matching mental illness recordkeeping rules. This decision doesn't automatically repeal those state provisions. You will want to work with your safety counsel to determine whether you have continuing obligations in your state.

What the Opinion Does *NOT* Say

Regardless of where you operate, the opinion does not suggest that employers should reduce their focus on employee mental health following traumatic workplace events. The court expressly recognized the importance of protecting employee mental health. Its decision addressed only whether Congress authorized OSHA to mandate recording work-related mental illnesses under the existing statutory language.

This decision also does not eliminate other employment-related obligations that may arise following traumatic workplace incidents, including issues involving employee leave, accommodations, benefits, confidentiality, workers' compensation, and other legal requirements.

7 Steps You Should Consider Taking

Safety professionals, HR leaders, and in-house counsel should consider taking the following steps:

1. Review OSHA Recordkeeping Practices

Update internal OSHA recordkeeping procedures, guidance documents, and training materials to determine whether they rely on the now-vacated regulation. Multi-state employers should also evaluate whether applicable state-plan OSHA requirements differ from the federal framework.

2. Continue Supporting Employees After Traumatic Events

Nothing in the decision discourages you from offering mental health resources to your workforce. Employee assistance programs, crisis response teams, peer-support initiatives, and trauma-informed follow-up remain important components of an effective safety culture. [Check out our guide to supporting employee mental health here.](#)

3. Separate Recordkeeping Decisions From Employee Care

Whether an illness is recordable for OSHA purposes should not determine whether an employee receives appropriate support. You should maintain separate processes for OSHA recordkeeping, disability management, leave administration, accommodations, and employee well-being.

4. Review Incident Response Protocols

Significant workplace incidents often generate simultaneous safety, medical, legal, and HR issues. You should ensure that incident response procedures clearly define each department's role, including how medical information is evaluated and documented.

5. Protect Medical Confidentiality

Mental health information should continue to be handled with appropriate confidentiality safeguards. Ensure that medical information is maintained separately from general incident investigation materials whenever appropriate.

6. Train Safety and HR Personnel

Personnel responsible for OSHA recordkeeping should understand the scope of the 5th Circuit's decision while avoiding the misconception that it changes broader employer responsibilities relating to employee health and well-being.

7. Monitor Future Developments

This decision may not represent the final word. OSHA could consider additional regulatory action, Congress could amend the statute, or other courts could address similar issues. You should continue monitoring developments before making significant changes to your compliance programs.

Conclusion

We will continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Workplace Safety and Catastrophe Management Practice Group](#).