



The Endless December of Activist Government - Yet More OSHA Recordkeeping Changes

Insights

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Wow. In 30 years of practice, I've never seen so many expansive government moves, and certainly I've never seen more changes made by fiat rather than through the legislative or rulemaking processes. First the January 2015 Recordkeeping changes were announced, and then NLRB change, after change, after change. And there's a week and a half left! One's perspective of naughty or nice varies according to whether one is an employer or union or appointed official, but I'm thinking that employers feel as if they have been put on the Administration's naughty list. The coal does seem to be raining down on them.

Don't get me wrong, there are significant areas where both the NLRB and OSHA processes need updating and employers may not like some of those changes, but the last two week's changes do not seem to meaningfully improve safety or move American workers up a step.

So let's talk about Recordkeeping. OSHA's Workplace Injury and Illness Recordkeeping process is broken. The system was never intended to drive employer safety efforts, and yet, because of OSHA's emphasis, businesses select contractors and suppliers based on absurdly low injury numbers which do not necessarily bear any relationship to safety efforts. OSHA shames employers whose numbers are high and employers respond by further focusing on these blasted lagging indicators. Employers do not eliminate employee injuries by myopic fascination with the lagging indicator of an injury. One should focus on the "leading indicators" or causes of injuries, but now OSHA has convinced every CEO and CFO to ignore their safety professional's pleas to focus on leading indicators because by golly, all that matters are those injury numbers. I can't help but feel that the Administration is more focused on punishing employers than devising meaningful approaches to keep workers safe. Of course, injury and illness numbers are important, and employers should be chagrined every time a worker is hurt. But how, pray tell does treating kinesiology taping the same as formal PT improve safety?

From OSHA:

Thank you for your recent letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping requirements contained in 29 CFR Part 1904 - Recording and Reporting Occupational Injuries and Illnesses. You ask if kinesiology tape is considered medical treatment for OSHA recordkeeping purposes.

We consulted with physicians in OSHA's Office of Occupational Medicine and they inform us that kinesiology taping is designed to relieve pain through physical and neurological mechanisms. The lifting action of the tape purportedly relieves pressure on pain receptors directly under the skin, allowing for relief from acute injuries. The use of kinesiology tape is akin to physical therapy and is considered medical treatment beyond first aid for OSHA recordkeeping purposes. (See section 1904.7(b)(5)(ii)(M)).

I know the argument. Supposedly evil employers are trying to game the system and avoid reporting injuries by not providing medical care, and the taping of an ankle or limb is another devious effort to provide medical treatment without recording an injury. So we find another activity which should be treated as first aid, now treated as medical treatment. This change will further inflate the injury numbers and until OSHA takes steps to get businesses to base contractor selection decisions on something other than injury data, more companies will struggle and probably will not use this often wise proactive measure. I'm a former coach, not a medical person, and I fear that OSHA is more and more preventing intelligent efforts to prevent injuries.

Alright. Enough ranting. I'm already missing Stephen Colbert, I guess. Here's the deal. Until you hear otherwise, this Administration will treat any activity that does not fit the following definition of First aid to be "medical treatment." It doesn't matter that first aid, proactive measures and kinesiology have all changed. You must religiously adhere to the following list or be eternally damned with a recordable injury.

First Aid includes:

- Using a non-prescription medication at nonprescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for recordkeeping purposes)
- Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment)
- Cleaning, flushing or soaking wounds on the surface of the skin
- Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc., are considered medical treatment)
- Using hot or cold therapy
- Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes)
- Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.)

- Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister
- Using eye patches
- Removing foreign bodies from the eye using only irrigation or a cotton swab
- Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means
- Using finger guards
- Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes)
- Drinking fluids for relief of heat stress

Recent Interpretations have found other activities to fail to meet the definition of First Aid:

- 06/26/2013 - Determining Whether the Employer is Required to Record a Work-related Injury Sustained by an Employee which was Treated by a Reduction Procedure Performed on Her Dislocated Ring Finger
- 05/20/2011 - Clarification on whether an exercise regime is first aid or medical treatment.
- 04/18/2011 - Clarification on recordability when trigger point injections are used for medical treatment and for diagnostic procedures
- 05/21/2010 - Therapeutic exercise is considered medical treatment for recordkeeping purposes.
- 05/05/2010 - Clarification on pre-existing conditions and recordable incidents.
- 11/16/2009 - Whether manual joint manipulation is considered first aid or medical treatment for recordkeeping purposes.
- 10/06/2009 - Clarification on prescription medications and recordkeeping requirements.
- 02/06/2007 - Clarification of several recordkeeping scenarios regarding the use of prescription medication in treating a work-related case.
- 11/15/2005 - Once medical treatment beyond first aid has occurred for injury or illness the case must be recorded.
- 03/10/2005 - All prescription medications, including preventive antibiotics, should be considered medical treatment and are recordable.
- 08/26/2004 - Use of glue to close a wound is medical treatment; prescription antibiotics/antiseptics for preventive treatment of a wound is medical treatment.
- 03/19/2003 - Results of an MRI do not negate the recordability of a physician's recommendation.
- 08/08/2002 - Use of liquid bandages on wounds is considered first aid.
- 10/29/2001 - Recording of cases in which a health care professional issues a prescription, whether that prescription is filled or not.

Conclusions

1. The heck with the Feds. Do the right thing. Use whatever strategy best protects workers and prevents injuries.
2. Whether you like it or not, Record the matter as OSHA currently demands.
3. Do something to get governmental leadership who will respect OSHA's mission, quit starving them for funding, and who will demand that the Agency made sound non ideological decisions. And if we do get a change, ask them to make OSHA's first action be to rationalize recordkeeping and educate businesses on why they should not solely rely on injury data for business decisions.

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