The FMLA's Confidentiality Provisions Trump OSHA's Recordkeeping Requirements

Insights
10.08.14

In a recent and somewhat surprising decision, the Occupational Safety & Health Review Commission held that the confidentiality provisions of the Family and Medical Leave Act (FMLA) supersede OSHA's recordkeeping requirements.

In *Sec'y of Labor v. USPS*, OSHRC, No. 08-1547 (9/29/14), OSHA cited the United States Postal Service (USPS) for failing to report employee injuries disclosed in FMLA papers. In this case, an employee submitted to her employer an FMLA leave application in which the doctor stated she had a "serious health condition…caused by her work environment exclusively." There was no evidence USPS had any knowledge of the employee's illness from sources other than the FMLA documents. Although the FMLA documents seemingly notified USPS that the illness was work-related, USPS did not record the injury on its OSHA 300 or 301 forms pursuant to 29 C.F.R. Part 1904, a failure for which they were cited by OSHA. An administrative law judge (ALJ) affirmed the citation following an administrative hearing.

The Commission, however, overruled the ALJ's decision and vacated the citation. The Commission found the confidentiality provisions of the FMLA (29 C.F.R. §825.500(g)), which require USPS to maintain the employee's FMLA documentation in a separate system of confidential records, precludes USPS from recording the information about the employee's illness on its OSHA log and report. "Because the provision plainly prohibits the use of FMLA documentation for non-excepted purposes, we conclude that such documentation may not be reviewed by an employer for OSHA recordkeeping purposes," the Commission said.

The Commission also refused to hold an employer has knowledge of an OSHA recordable injury or illness solely because one of its supervisors became aware through FMLA documents that the employee's health condition was work-related. This aspect of the decision is important, because, for most employers, FMLA paperwork is handled by Human Resources personnel, who may not be trained to look for information that may have OSHA implications. If the Commission had decided differently, employers would have had to train their HR personnel on OSHA recordkeeping requirements or taken similar safeguards to ensure potentially recordable injuries and illnesses did not go unnoticed. That potential burden has been lifted.

In short, the Commission's decision means if an employer receives FMLA paperwork indicating the employee's health condition is or could be work-related, the employer does not have an obligation to

employee's health condition is or could be work-related, the employer does not have an obligation to record the illness or injury on its OSHA logs and reports, or even to inquire as to whether the injury or illness is, in fact, work-related. The decision, therefore, should be a relief to employers, particularly those employers with large workforces who may frequently request FMLA leave.

It's not often the Commission decides employers have less obligations than what OSHA contends, so enjoy this victory while you can.