



Kentucky Adopts Federal OSHA Recordkeeping Changes

Insights

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The Kentucky Labor Cabinet's Department of Workplace Standards, Division of Occupational Safety and Health Compliance has published its intent to adopt certain Federal OSHA Recordkeeping regulations, including the new electronic reporting and anti-retaliation provisions published in the May 12, 2016 Federal Register ([view proposed regulations](#)). States that have their own OSHA plan, such as Kentucky, are required to have OSHA programs that are at least as effective as Federal OSHA, and are consequently required to adopt and implement new federal standards, or a more stringent standard, within six (6) months of the adoption or amendment by Federal OSHA. This new rule in Kentucky is set to take effect on January 1, 2017.

The new Federal OSHA rule will require employers with more than 20 employees to electronically submit injury records that will be posted on OSHA's website. These requirements will begin in July 2017. The new Federal rule also includes new anti-retaliation provisions that require an employer to have a "reasonable procedure" for reporting work related injuries and illnesses, and specifies that a procedure is not reasonable if it would deter or discourage an employee from reporting an injury or illness. The advisory material accompanying the new Federal rule, however, provides that OSHA will consider certain employer policies and practices such as post-accident drug testing and safety incentive programs as unreasonable because OSHA believes such policies and practices will deter employees from reporting injuries or illnesses to their employers. Kentucky's proposed adoption would include these provisions as well.

Part of the new Federal OSHA Recordkeeping rule was recently challenged by several employer associations and others when a lawsuit was filed in a federal court in Texas asking the court to enjoin the anti-retaliation provisions from taking effect as scheduled on August 10, 2016. Also, today Federal OSHA announced it is delaying the effective date to November 1, 2016. It is not clear at this time whether that federal lawsuit, and any injunction that may be issued in that case, would have any effect on Kentucky's efforts to adopt the new Federal Recordkeeping regulation.

Other changes proposed include, the definition section where Kentucky has maintained its definition of an amputation includes bone tissue, in contrast to the federal definition. Kentucky has also maintained its reporting requirements, in lieu of 29 C.F.R. 1904.39, which differ slightly from Federal OSHA wherein Kentucky requires an amputation, loss of an eye, or the hospitalization of fewer than 3 employees to be reported within 72 hours, as opposed to Federal OSHA's 24 hour requirement. Fatalities and the hospitalization of 3 or more employees must be reported within 8 hours, same as

Federal OSHA. The requirement to report the loss of an eye became effective as of January 1, 2016, and the other reporting requirements have been in effect in Kentucky since 2006.

There will be a public hearing on August 22, 2016 at 10:30 A.M. (EDT) at the Labor Cabinet in Frankfort. This hearing is open to the public. Written comments will also be accepted until August 31, 2016.

Related People



Todd B. Logsdon

Partner

502.561.3971

[Email](#)