

# Fifth Circuit Strikes Down OSHA's Mental Health Recordkeeping Rule

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The U.S. Court of Appeals for the Fifth Circuit vacated<sup>1</sup> OSHA's mental illness recordkeeping rule, which requires employers to record employees' work-related mental illness once a qualified health care provider connects the illness to the workplace.<sup>2</sup> The court held in a ruling on July 21, 2026, that the Occupational Safety and Health Act does not authorize OSHA to require employers to record work-related mental illnesses on their OSHA 300 and 301 logs. Reading 29 U.S.C. § 657(c)(2), the panel concluded that the work "illnesses" in the statute refers only to physical ailments and that OSHA exceeded its statutory authority in promulgating the mental illness recordkeeping rule.

Under this significant decision, employers in the Fifth Circuit—covering Texas, Louisiana and Mississippi—are no longer required to record work-related mental health conditions such as PTSD on OSHA recordkeeping forms. The ruling also reflects the broader post-*Loper Bright* trend of federal courts exercising more rigorous independent judgment when reviewing agency claims of regulatory authority.

A unanimous panel framed the central question as whether "illnesses" in 29 U.S.C. § 657(c)(2)—which directs OSHA to prescribe regulations requiring employers to maintain records of "work-related deaths, injuries and illnesses"—encompasses mental illnesses. The court concluded that it does not.

Applying *Loper Bright*'s requirement of independent judicial judgment, the court invoked the interpretive canon of *noscitur a sociis* ("a word is known by the company it keeps"). The court reasoned that because "injuries" and "illnesses" are conjoined in the statute, the two categories should be read alike—as physical harms.

Several contextual indicators reinforced the physical-harm reading. For example, the court found contemporaneous dictionaries did not define "illness" to expressly include non-physical conditions. The court rejected OSHA's legislative history and broad statutory purpose arguments, noting that "legislative history is not law" and that the general purpose of providing safe working conditions does not override the specific language of the recordkeeping authority in § 657(c)(2). The court vacated the citation and the mental illness recordkeeping rule.

## Key Takeaways

- **No Obligation to Record Mental Illnesses in the Fifth Circuit:** Employers in Texas, Louisiana and Mississippi are no longer required to record work-related mental health conditions on OSHA Forms 300 and 301. The court vacated 29 C.F.R. § 1904.5(b)(2)(ix).
- **Monitor for Any Appeal and Potential Rulemaking:** OSHA has 45 days from entry of judgment in this case to seek panel rehearing or rehearing *en banc*, and 90 days from entry of judgment (or from denial of any timely rehearing petition) to petition for a writ of certiorari at

the U.S. Supreme Court. OSHA could also respond to this Fifth Circuit decision by rulemaking. Employers should monitor these potential developments.

- **Multi-state Employers Should Weigh Recording Options:** Recording obligations apply establishment by establishment, and establishments outside the Fifth Circuit remain covered by the mental illness recordkeeping rule. Excluding mental illness cases in Texas, Louisiana and Mississippi could impact national DART rate for employers that also operate outside these states. Those employers should consider how the different requirements in the Fifth Circuit region versus the rest of the country impact the integrity of their recordkeeping logs—especially as, among other things, DART rates are reported to OSHA, published and used in contractor prequalification, insurance underwriting and enforcement targeting. In any case, employers should document the different recordkeeping policies now applicable in the Fifth Circuit region.
- **State OSHA Plans May Differ:** Employers in states with OSHA-approved state plans should review those state-specific requirements, which may independently impose mental health recordkeeping obligations unaffected by this ruling.
- **Consider Continued Support for Employee Mental Health:** The absence of a recording obligation does not diminish the practical value of employee mental health assistance programs, mental health resources and other supportive workplace policies. It may be prudent to continue with such support programs in the workplace.
- **Broader Judicial Scrutiny of Agency Authority:** The decision reflects the post-*Loper Bright* landscape, in which courts exercise independent judgment in policing the boundaries of administrative agency authority. Continued challenges to regulatory mandates lacking clear statutory authorization can be expected.
- **Review Existing Recordkeeping Practices:** Employers in the Fifth Circuit that have previously recorded mental health conditions on OSHA logs may need to revisit those policies and procedures to comply with the Fifth Circuit's decision.

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<sup>1</sup> *Exxon Mobil Corp. v. Occupational Safety & Health Review Commission*, No. 25-60108 (5th Cir. July 21, 2026).

<sup>2</sup> 29 C.F.R. § 1904.5(b)(2)(ix).