

## OSHA Quarterly Newsletter, August 2016

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By Matthew Thomas Deffebach | August 18, 2016

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### **OSHA's New Recordkeeping Rule's Reporting Provisions: Delayed and Being Challenged in Court**

The Occupational Safety and Health Administration issued a new rule on May 11, 2016, which requires certain employers to electronically submit information regarding workplace injuries and illnesses. The recordkeeping rule primarily addresses a new requirement that many employers will have to upload injury and illness data included on various OSHA logs to an OSHA website for public review. That aspect of the rule becomes effective on January 1, 2017.

[Read more.](#)

### **OSHA Provides Information Regarding New Fine Amount Calculations in New OSHA Field Manual**

OSHA increased fine amounts by 78 percent effective August 1, 2016. The maximum penalty for a serious violation will increase from \$7,000 to \$12,471. The maximum penalty for a repeat or willful violation will increase from \$70,000 to \$124,709. Failure to abate citations will increase from \$7,000 per day beyond the abatement date to \$12,471 per day beyond the abatement date.

[Read more.](#)

### **Deputy Attorney General Details New Policy of Criminal Liability for Companies and Employees**

The Department of Justice continues to underscore its policy to prosecute individuals in corporate cases. Following the DOJ's controversial September 2015 mandate instructing federal attorneys to prosecute individual employees in addition to companies, Deputy Attorney General Sally Quillian Yates defended the position at the New York City Bar Association White Collar Criminal Law Committee Conference on May 10, 2016. Yates focused on the parts of the so-called "Yates Memo" that involve privileged communications in response to worries and criticisms from corporations.

[Read more.](#)

### **OSHA Launches Pilot Program for Whistleblower Violators in Region VII**

OSHA launched a pilot program in Region VII entitled W-SVEP, effective May 27, 2016 as an enforcement mechanism for alleged severe violators of whistleblower retaliation regulations. Region VII includes employers in Kansas, Missouri and Nebraska, and those companies under federal enforcement in Iowa.

[Read more.](#)

### **Appeals Court Overturns Injunction against Employer for Alleged Whistleblower Violations**

On May 13, 2016, the Eleventh Circuit Court of Appeals overturned a whistle-blower temporary injunction granted to OSHA that tried to prevent an employer from suing workers who publicized their safety and health concerns against the company. The Secretary of Labor sought injunctive relief to prevent Lear Corp. from terminating, suspending, harassing or taking any other adverse employment action against current or former employees who engage with OSHA or otherwise publicly discuss safety issues at Lear Corp.

[Read more.](#)

### **Sexual Assault of Home Healthcare Worker Results in OSHA Citation**

OSHA has previously emphasized issues of workplace violence in the healthcare industry related to patient and client interactions. Employers of home health companies and other similar service providers should be aware that OSHA may cite employers who do not adequately protect employees from assault.

[Read more.](#)

### **OSHA Provides New Guidance on Good Engineering Practices**

OSHA has issued a memorandum clarifying the enforcement of the Process Safety Management (PSM) standard's recognized and generally accepted good engineering practices requirements. Employers covered under the PSM Standard, 29 C.F.R. § 1910.119, may want to review their compliance.

[Read more.](#)

### **In Other News**

Employers should also be aware of the following:

- As a service to the industry, the Haynes Boone Labor and Employment practice has released its inaugural *Retail Industry OSHA Monitor*, a survey and analysis of Occupational Safety and Health Administration investigations and citations of retail establishments throughout the nation that reveals the government's enforcement trends. The Haynes Boone article regarding the *Retail Industry OSHA Monitor* and the *Monitor* can be [viewed here](#).

If you have any questions, please visit the Haynes Boone [Occupational Safety and Health Act \(OSHA\) and Workplace Disasters page](#) of our website or contact one of the lawyers listed in this newsletter.