

OSHA Quarterly Newsletter, November 2018

November 8, 2018 Matthew Deffebach

PRACTICES Labor and Employment, OSHA

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OSHA States that Most Instances of Workplace Drug Testing are Permissible

In a memorandum dated October 11, 2018, OSHA clarified its position on drug testing under 29 C.F.R. § 1904.35(b)(1)(iv). Under the previous guidance from OSHA, employers were limited to post-accident drug testing to situations where there was a “reasonable probability” that drugs or alcohol consumption contributed to the work-related injury. In the October 2018 memorandum, employers have no such restriction.

[Read more.](#)

California Extends Statute of Limitations on Recordkeeping Violations

Governor Jerry Brown signed a bill that expands the statute of limitations for issuing citations to employers for failing to record workplace injuries or illnesses. Previously, Cal/OSHA could only cite an employer for recordkeeping violations that took place within the six months prior to the issuance of a citation. Beginning January 1, 2019, California Labor Code will provide that a recordkeeping violation continues until the violation is corrected, the division discovers the violation, or the duty to comply with the requirement that was violated no longer exists.

[Read more.](#)

OSHA Petitioned to Adopt National Heat Standard

Public Citizen, a nonprofit consumer advocacy organization, and others petitioned OSHA this summer to adopt “the first federal standard that would protect outdoor and indoor U.S. workers from occupational exposure to excessive heat.” The petition proposed adopting the National Institute for Occupational Safety and Health’s latest iteration of its criteria for an occupational heat stress standard.

[Read more.](#)

Eleventh Circuit Limits OSHA’s Authority to Conduct Wall-to-Wall Inspections

In *U.S. v. Mar-Jac Poultry, Inc.*, the U.S. Court of Appeals for the Eleventh Circuit held that OSHA may not expand the scope of an injury-based inspection to a facility-wide inspection merely based on the employer’s OSHA 300 injury and illness logs. Although *Mar-Jac* may only be relevant to the Eleventh Circuit states, Alabama, Florida and Georgia, employers nationwide should note this decision when defending against wall-to-wall inspections by OSHA.

[Read more.](#)

Preemptive Measures to Ensure Employee Safety During Emergencies

Hurricane season serves as a reminder that emergencies and disasters can strike at any time, threatening employee safety and increasing the risk for workplace injuries and illnesses. Because

employers are obligated to keep their employees safe during working hours, it is important to consider the health and safety of their employees before emergencies strike.

[Read more.](#)

Leveling the Playing Field: Clarifying OSHA's Burden for Proving Repeat Violations

In July 2018, the Occupational Safety and Health Review Commission issued its decision in *Secretary of Labor v. Angelica Textile Services, Inc.*, providing employers guidance on rebutting repeat violations and clarifying the defenses that employers may have in combating repeat violations. No. 08-1774.

[Read more.](#)

Protecting Worker Information: Proposed Changes to OSHA's Recording and Reporting Requirements

In July 2018, OSHA published a Notice of Proposed Rulemaking (NPRM) to eliminate much of the still-existing electronic reporting obligations for establishments with 250 or more employees. Specifically, the proposed rule seeks to revoke requirements that mandate applicable establishments to electronically submit information from OSHA Forms 300 and 301. However, the proposed rule would not omit the requirement that applicable establishments submit the OSHA Form 300A – summaries of work-related injuries and illnesses – and would add a requirement that covered establishments submit their Employer Identification Number (EIN) with submissions.

[Read more.](#)

OSHA's Extension for Beryllium Rule Compliance Extended to December

OSHA issued a final rule extending the compliance date to December 12, 2018 for specific requirements of the general industry beryllium standard. The provisions effected by this extension include those for methods of compliance, beryllium work areas, regulated areas, personal protective clothing and equipment, hygiene facilities and practices, housekeeping, and communication of hazards and recordkeeping.

[Read more.](#)

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.