

Punam Kaji in Business Insurance: Overturning OSHA Volks Rule Easier on Employers' Wallets

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Employers may get some relief from record-keeping fines if a U.S. Occupational Safety and Health Administration rule requiring them to keep injury and illness records for five years is reversed, but they will still have to deal with more contentious agency rules for the time being.

The U.S. House of Representatives voted 231-191 to adopt H.J. Res 83, a resolution of disapproval under the Congressional Review Act (CRA) that targets OSHA's rule that clarifies that employers have a continuing obligation to make and maintain an accurate record of each recordable injury and illness for five years. The rule now goes to the Senate, and the Trump administration issued a statement of administration policy on Feb. 28 indicating its support...

The rule, which became effective Jan. 18, was OSHA's attempt to affirm a long-held agency stance that has been upheld by the Occupational Safety and Health Review Commission in cases dating back to 1993, but was rejected by the U.S. Court of Appeals for the District of Columbia Circuit in 2012 in *AKM L.L.C. v. Secretary of Labor (Volks)*.

"The Volks rule was kind of a clarification on that statute of limitations issue for record-keeping citations so it's almost like undoing a clarification," said Punam Kaji, a Houston-based attorney in the labor and employment and OSHA practices of Haynes Boone LLP...

The CRA had only been successfully used once to undo a federal agency regulation when President George W. Bush and Congress derailed OSHA's efforts to regulate ergonomics via a formal standard in 2001. But the CRA has already been used twice this year to overturn regulations issued by the U.S. Securities and Exchange Commission and the Department of Interior...

"That is going to be one of the main tools," Ms. Kaji said. "It could also be used on the walking-working surfaces and the personal protective equipment rule that came out recently. I'm not sure why you would use it for that rule. I don't see those changes being controversial in any way."

Excerpted from *Business Insurance*. To read the full article, please [click here](#) (subscription required).