

California Enacts New Law for Recordkeeping Violations after Trump Administration Nullifies Volks Rule

April 12, 2019 Matthew Deffebach

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Effective January 1, 2019, California Assembly Bill 2334 extends the period for which the California Division of Occupational Safety and Health, Cal/OSHA can issue citations for recordkeeping violations. AB 2334 expands the definition of an “occurrence” for purposes of the statute of limitations for recordkeeping violations. The definition provides that an occurrence continues until it is corrected, the Division discovers the violation, or the duty to comply with the requirement that was violated no longer exists. A six-month statute of limitations applies to citations issued under Cal/OSHA for an occurrence of a violation. Accordingly, California employers could be subject to recordkeeping violations for as long as five years, the amount of time employers must maintain injury and illness records.

The new law appears to be a reaction to the Trump Administration’s nullification of the Obama-era OSHA rule, “Clarification of Employer’s Continuing Obligation to Make and Maintain Accurate Records of Each Recordable Injury and Illness,” also known as the *Volks* rule. In other words, the Trump Administration rule set aside the Obama Administration’s effort to override *AKM LLC d/b/a Volks Constructors v. Sec’y of Labor*, 675 F.3d 752 (D.C. Cir. 2012), a U.S. Court of Appeals for the District of Columbia which held that OSHA cannot issue citations for failing to record injuries or illnesses beyond the six-month statute of limitations set out in the OSH Act.