

# OSHA's Continuing Recordkeeping Obligation Rule Revoked via the Congressional Review Act

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PRACTICES OSHA, Labor and Employment

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Congress and the White House utilized the Congressional Review Act to overturn the Obama Administration's final rule entitled "Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness."<sup>1</sup> The Congressional Review Act allows Congress and the White House to review and reverse laws passed towards the end of a former president's term.

The rule that Congress reversed was issued on December 19, 2016, and took effect on January 18, 2017. The rule supported an ongoing duty to maintain accurate 300 log records, allowing OSHA to issue recordkeeping citations to employers that have incomplete or otherwise inaccurate records at any point during the five-year record retention period, and, under the six-month statute of limitations, for up to six months thereafter. The rule was intended to overturn *Volks II*, a 2012 case where the U.S. Court of Appeals for the District of Columbia Circuit found that OSHA cannot cite employers for failing to record on-the-job injuries or illnesses if the violation took place more than six months before the citation date according to the statute of limitations. *AKM LLC dba Volks Constructors v. Sec'y of Labor*, 675 F.3d 752 (D.C. Cir. 2012).

Employers can consider this use of the Congressional Review Act a victory. Interestingly, the rarely used mechanism of the Congressional Review Act was last used in 2001 to undo a Clinton-era OSHA regulation regarding ergonomic injuries in the workplace.

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<sup>1</sup> [H.R.J. Res. 83, 115th Cong. \(1st Sess. 2017\); 81 Fed. Reg. 91792 \(December 19, 2016\).](#)