

OSHA Compliance, Enforcement, and Expected Rulemakings

Pharmaceutical EHS Counsel Roundtable

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Overview

Compliance with OSHA's New Electronic Reporting Requirements and Anti-Retaliation Provisions

Enforcement Trends

Recent and Anticipated Rulemaking Activity

Electronic Reporting Rule

- Issued May 12, 2016
- Key Components
 - Electronic Reporting
 - Anti-Retaliation Provisions

Electronic Reporting: What Records Must be Submitted?

OSHA Injury Reporting Forms:

OSHA
300A

Summary
of
recordable
injuries
and
illnesses

OSHA
300

Log of
work-
related
injuries
and
illnesses

OSHA
301

Injury and
illness
incident
report

Electronic Reporting: Deadlines

Electronic Reporting Phased in Over Three Years:

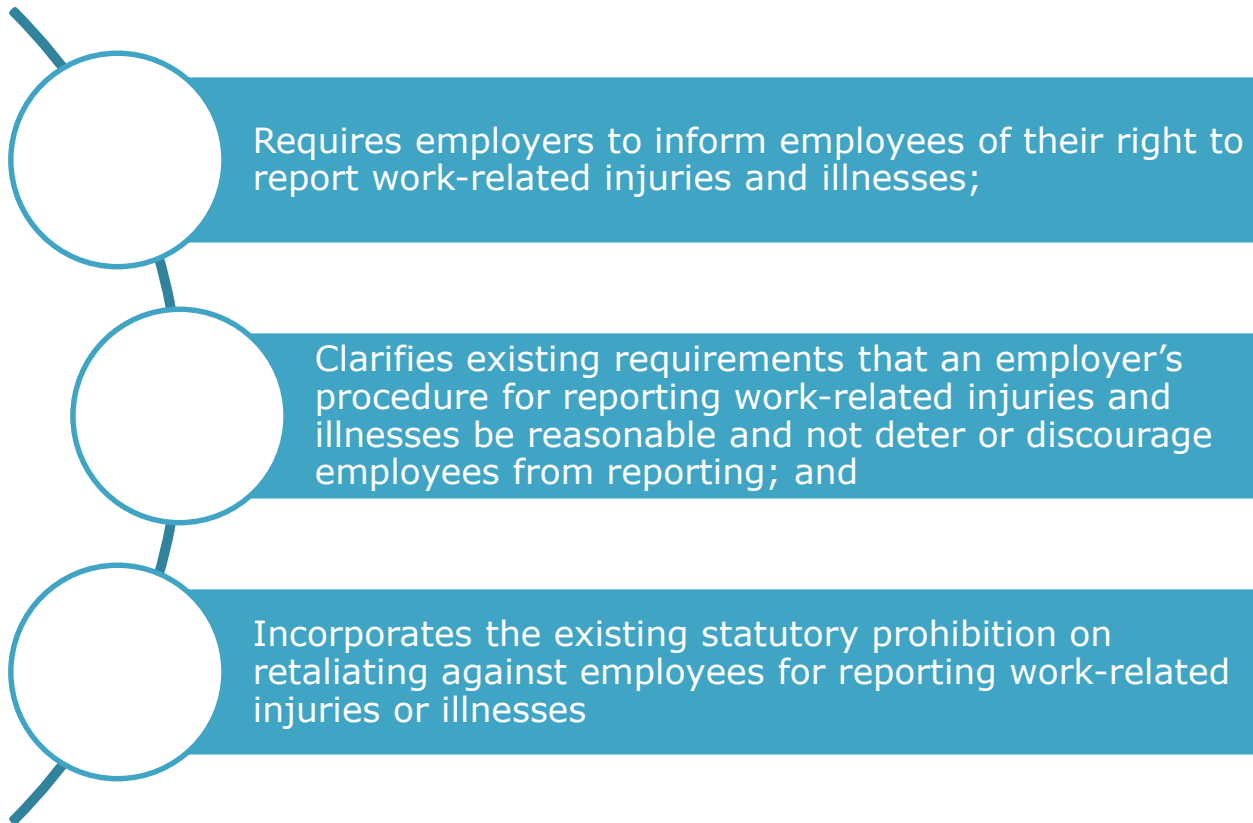
	Employers with 250+ Employees	“High-Risk” Industry Employers with 20-249 Employees
July 1, 2017	2016 OSHA Form 300A	2016 OSHA Form 300A
July 1, 2018	2017 OSHA Forms 300A, 300, and 301	2017 OSHA Form 300A
March 2, 2019 (and every subsequent year)	Previous year’s OSHA Forms 300, 300A, and 301	Previous year’s OSHA Form 300A

Electronic Reporting: How to Prepare

- Employee Training
 - Review basics of OSHA Injury/Illness Recordkeeping
 - Assign staff responsible for electronic submission
 - Emphasize protection of personally identifiable information consistent with compliance with regulatory requirements
- Immediately advise OSHA about any inadvertent errors or publications of personally identifiable information

Anti-Retaliation Provisions

Final rule revises 29 CFR §§ 1904.35-.36 to require employers to encourage employees to report injury/illness:



Anti-Retaliation Provisions

**Originally scheduled to become effective on
Aug. 10, 2016**

OSHA received pushback regarding the rules, especially regarding safety incentive programs and post-accident drug testing

Injunction action was filed in July 2016 to prevent the rule from taking effect. OSHA opposition brief filed in August 2016



Enforcement delayed

July 13, 2016 D. Dougherty Memo to Regional Administrators postponed enforcement until November 1, 2016

October 18, 2016 Notice to Court and attached memo postponed enforcement until December 1, 2016

Anti-Retaliation Provisions: OSHA Guidance

Informing Employees

- Employers can satisfy this requirement by posting *current* version of OSHA Poster
- Could also meet requirement by providing written or email notice to each employee

Reporting Procedures

- Reasonable:
 - Require report as soon as practicable
 - Require report through reasonable means
- Unreasonable:
 - Discipline for failure to report before recognition of work-related injury
 - Discipline for failure to report immediately as a result of injury or illness
 - Unnecessarily cumbersome
 - Excessive number of steps

Prohibition Against Retaliation

- Disciplinary Policies:
 - Avoid automatic discipline simply for reporting
 - Treat violations of work rules the same way
- Drug Testing:
 - Consider whether drug use could have contributed to injury
 - Do not single out injured employees
- Incentive Programs:
 - Avoid withholding benefit because of reported injury
 - Reward compliance with safety rules, participation in safety-related activities

Anti-Retaliation Provisions: Compliance Considerations

Have you informed employees of right to report injuries and illnesses?

Have you reviewed procedure for reporting injuries and illnesses?

Have you verified that safety programs do not deter or discourage reporting?

Have you considered implementing safety incentive programs that reward safety practices?



Criminal Enforcement Under the Worker Endangerment Initiative

Background



DOJ/DOL announced joint initiative in December 2015

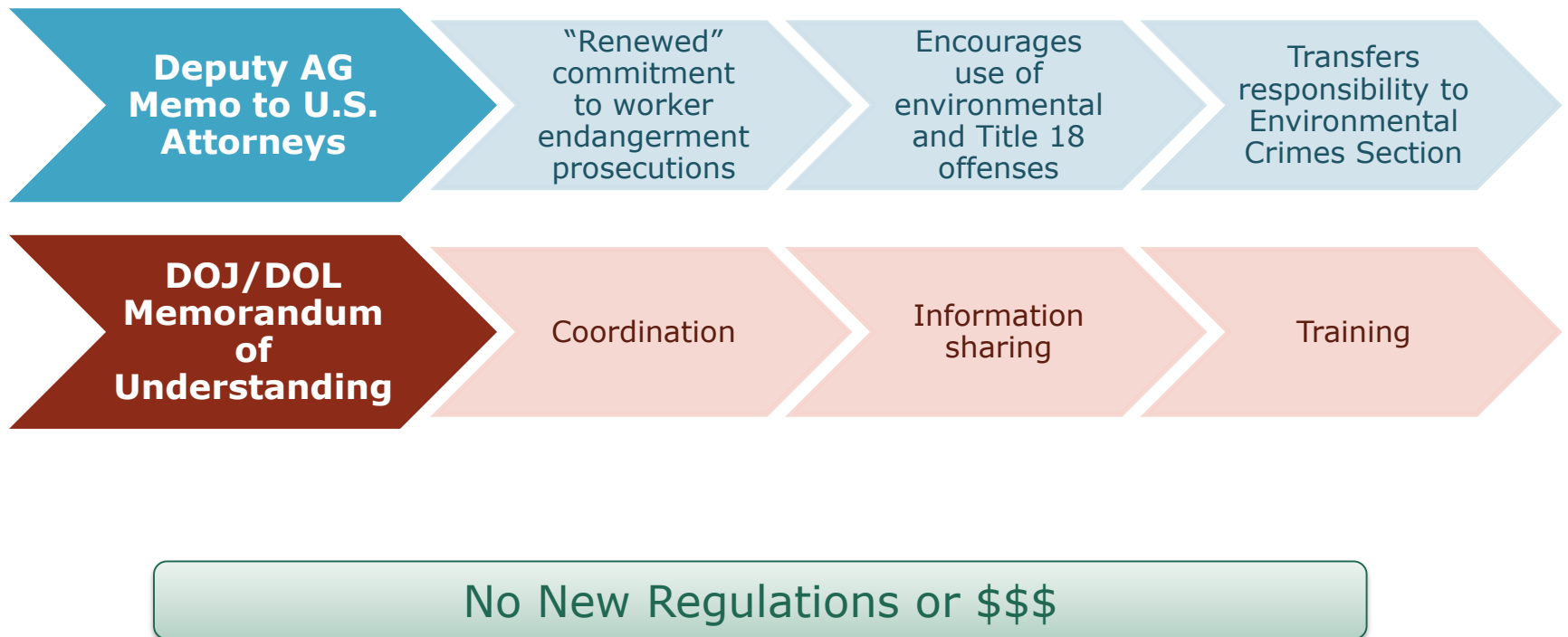


Effort to prosecute companies and officials who violate environmental and worker-safety laws



Intended to address limited criminal enforcement under OSH Act

Criminal Enforcement Under the Worker Endangerment Initiative



Criminal Enforcement Under the Worker Endangerment Initiative



*U.S. v. Behr Iron & Steel Inc.,
No. 3:16-CR-50015 (N.D. Ill.)*



*U.S. v. KTX Ltd, et al,
No. 1-16-CR-00075
(E.D. Tex.)*



*U.S. v. DNRB, Inc.,
dba Fastrack Erectors,
No. 4:15-CR-00362 (W.D.
Mo.)*

Increased Penalties for OSH Act Violations

Type of Violation	Prior to August 1, 2016	As of August 1, 2016	As of January 13, 2017
Serious Other-Than-Serious Posting Requirement Failure to Abate	\$7,000	\$12,471	\$12,675
Willful Repeat	\$70,000	\$124,709	\$126,749

Recent Rulemaking Activity

Rule	Issued	Description	Status
Occupational Exposure to Crystalline Silica	03/25/2016	Comprehensive protections for exposure to respirable crystalline silica, including lower PEL and requirements for exposure assessment, exposure control, respiratory protection, medical surveillance, hazard communication, and recordkeeping	Effective 06/23/2016; Legal challenge pending in D.C. Circuit
Improve Tracking of Workplace Injuries and Illnesses	05/12/2016	Requirements for electronic filing of injury and illness logs and anti-retaliation provisions	All requirements effective as of 01/01/2017; Legal challenges pending in N.D. Texas and W.D. Oklahoma
Fall Protection	11/18/2016	Revised Walking-Working Surfaces standard by including updated and new provisions for fixed ladders, rope descent systems, and fall protection systems and criteria; added requirements to PPE standard that address design, performance, and use of personal fall protection systems	Effective 01/17/2017; Legal challenges consolidated and pending in Seventh Circuit
Obligation to Make and Maintain Records	12/19/2016	"Clarifies" employers' "continuing" obligation to make and maintain an accurate record of each recordable injury and illness beyond 6-month statute of limitations under the OSH Act	Effective 01/18/2017; House Resolution under Congressional Review Act pending
Occupational Exposure to Beryllium	01/09/2017	Comprehensive protections for exposure to beryllium, including lower PEL and requirements for exposure assessment, exposure control, respiratory protection, PPE, housekeeping, medical surveillance, hazard communication, and recordkeeping	Effective date postponed to 03/21/2017; Legal challenges consolidated and pending in Eighth Circuit

Anticipated Rulemaking Activity

OSHA's Unified Agenda

Proposed Rule Stage

Infectious Diseases

Prerule Stage

Bloodborne Pathogens

Combustible Dust

Preventing Backover Injuries and Fatalities

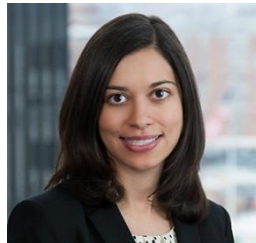
Long-Term Actions

Injury and Illness Prevention Program

PSM rulemaking has been removed from regulatory agenda

Questions?

Thank you!



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