

PUBLICATION

What to Expect from OSHA in 2014

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With federal budget battles over, employers can expect to see more from OSHA during the remainder of fiscal year 2014. OSHA's budget year began October 1, 2013 with the infamous shutdown of the government. During the shutdown, federal OSHA only operated with a skeleton crew and many of the typical type of OSHA inspections did not occur. Now that a two year deal on federal spending was reached in December, 2013, OSHA not only has funding, but has also gained money in its budget due to many of the dollars related to the sequester budget cuts being given back as part of the deal. What does this mean to employers? You guessed it, OSHA's back and with a vengeance.

Already, OSHA's regulatory agenda has become packed with items. In particular, one of the more hotly contested proposed regulations would require many employers to provide OSHA with their injury and illness data as often as quarterly or at a minimum, at least once per year. Currently, OSHA only gathers specific data of injuries and illnesses from employers when an OSHA inspection is conducted. More general data is gathered pursuant to surveys that are sent out by the Bureau of Labor Statistics or OSHA's Data Initiative. How would proactively providing data to OSHA affect an employer? Well, for one, it could trigger an OSHA inspection when one otherwise would not occur. OSHA will have the data electronically and will be able to use the data to target employers for inspection. If the data was truly an accurate depiction of safety or health hazards at the worksite, then that would not necessarily be a bad thing, however, what about the severe injury that occurs to an employee who is engaged in employee misconduct? The employer may have an excellent case for employee misconduct, but even so, the recordkeeping regulations require that the injury be logged on the OSHA 300s (of course, this is assuming that the nature of the severe injury triggered one of the reporting requirements under the recordkeeping regulations). The injury that would be reflected in the records would not necessarily reflect an unsafe worksite, yet, the employer could face the aspect of an OSHA inspection.

This proposed rule would also allow for the posting of the collected injury and illness data on OSHA's website, allowing anyone to review an employer's injury and illness data. The proposed rule would be a major change for many employers by allowing data to be easily reviewed by competitors, unions (potentially useful when attempting to organize a union campaign - currently, regulations only provide for unions accessing the injury and illness data at unionized facilities), prospective employees, media, or, basically, anyone who just wants to review the data for whatever purpose. Currently, only certain people are allowed access to an employer's injury and illness data.

Anyone can comment on a proposed rule and given the potentially wide ranging effect of this rule, most employers should comment. Comments are being accepted until March 8, 2014. Baker Donelson attorneys are available to assist in preparing comments or discussing the effect of the proposed rule on your business. Here's a link to the rule: <http://www.regulations.gov/#!documentDetail;D=OSHA-2013-0023-0001>.

On the enforcement front, with David Michaels continuing to head the agency, it is clear that OSHA will remain vigorous in enforcement efforts. Look forward to a tip each month on things to do to be prepared for an OSHA inspection. January's tip: review annual safety training for employees to ensure it is current and review the OSHA 300 logs. The annual summary of the 300 data (the 300A) is due to be posted at your worksite on February 1, 2014.

