

Labor and Employment Alert: OSHA's New Recordkeeping Rule is Invalidated

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On April 5, 2017, President Trump signed the congressional resolution disapproving Occupational Safety and Health Administration's (OSHA) rule, "Clarification of Employer's Continuing Obligation to Make and Maintain Accurate Records of Each Recordable Injury and Illness," generally referred to as the *Volks* rule. Both the Senate and House of Representatives had earlier passed a Joint Resolution of Disapproval under the little-used Congressional Review Act to revoke the rule which had been implemented in the final days of President Obama's administration. Because the resolution was passed under the Congressional Review Act, federal agencies are now prohibited from reissuing similar regulations without congressional approval.

The *Volks* rule is the result of a 2012 case in the U.S. Court of Appeals for the District of Columbia (*AKM LLC dba Volks Constructors v. Sec'y of Labor*). Under the Occupational Safety and Health Act, employers must record and maintain data related to work-related injuries and illnesses over a five-year period. The act authorizes OSHA to cite employers for violations of the record-keeping requirements only within a six-month time period. In *Volks*, the Court rejected OSHA's attempt to extend this time period and held that employers could not be cited for failing to record injuries or illnesses beyond the six-month statute of limitations set forth in the act.

Apparently dissatisfied with the *Volks* ruling, OSHA promulgated the "Clarification of Employer's Continuing Obligation to Make and Maintain Accurate Records of Each Recordable Injury and Illness" rule in response. This new rule permitted OSHA to cite an employer's record-keeping violations that were up to five years old. OSHA said that the rule was to "clarify that the duty to make and maintain an accurate record of an injury or illness continues for as long as the employer must keep and make available records for the year in which the injury or illness occurred. The duty does not expire if the employer fails to create the necessary records when first required to do so." The rule was supposed to become effective in January 2017.

The congressional resolution invalidates the rule, so OSHA may not cite employers for violations outside of the six-month statute of limitations. However, employers must still maintain, and update as needed, their OSHA 300 Logs of workplace injuries and illnesses for five years.

Contact your Vorys lawyer if you have questions about OSHA compliance.