

PUBLICATION

OSHA's Policy Mandates for ALL Employers Require Compliance by August 10, 2016 [Ober|Kaler]

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Last month, we published an article explaining the amendments to the recordkeeping requirements issued by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) regarding new mandatory electronic reporting requirements related to workplace injuries and illnesses.

While significant focus has been paid to the new amendments and the obligations of covered employers to come into compliance with the electronic reporting requirements, there have been several developments at OSHA that are much less talked about and that apply to *all* employers. Specifically, OSHA has articulated new expectations and requirements with regard to employer policies that relate to reporting workplace injuries and illnesses.

In the preamble to OSHA's new amendments is language explaining what the agency believes would be an "unreasonable reporting policy" or that would constitute "discrimination." Based upon this language, OSHA expects employers to revise policies in three different areas to come into compliance with its new expectations:

- **Work-Related Injury Reporting.** While most employers today have a policy in their handbook instructing that employees report workplace injuries or illnesses immediately, OSHA now expects employers to include an *explicit* statements advising employees that they have a *right* to report any injury or illness without fear of discrimination or discharge for making such a report. Currently, an employee must file a complaint with OSHA within 30 days of an employer's retaliatory act in order for that employee to pursue a whistleblower claim. Under the new requirement, OSHA will be able to cite an employer for alleged retaliation or discrimination up to 180 days after the occurrence *without any employee having filed a claim*.
- **Post-Accident Drug and Alcohol Testing Requirements.** OSHA has now taken the position that a blanket post-accident testing policy discourages employees from reporting work-related injuries or illnesses. OSHA expects employers to revise such policies to make the testing discretionary depending on the facts of the case and to account for the possibility that no testing will occur where the incident was unlikely to have been caused by drug or alcohol use (i.e., injuries caused by repetitive strain).
- **Safety Incentive Programs.** Similar to its position on post-accident drug and alcohol testing, OSHA also has taken the position that programs that provide economic incentive to employees based on low injury or illness reporting rates, or achieving a certain number of days without a recordable injury, discourage accident and illness reporting. OSHA explains that such programs would likely be considered "retaliatory." OSHA expects employers with such policies to revise them in a manner that they are clear in encouraging safety and a safe work environment but do not discourage reporting workplace injuries and illnesses when they do occur.

Again, these developments are particularly notable because they apply to *all* employers and they require employer action by August 10, 2016. Employers should be sure to review their handbooks to confirm that their workplace injury and illness-related policies comply with OSHA's new expectations.

