



New Electronic Reporting Rule for Workplace Injuries in Effect

December 2, 2016

OSHA's new rule requiring employers to electronically submit data on workplace injuries and illnesses went into effect yesterday, December 1, 2016. Actual electronic submissions to OSHA, however, do not begin until July 2017.

OSHA views automatic post-accident drug tests as discouraging workplace injury reporting because employees will face drug testing after any accident, even if drug use had no apparent connection to it. OSHA's new rule requires employers to consider whether drug use likely caused the accident.

A challenge to delay the new rule failed on November 28, 2016, when a federal district court in Texas denied an injunction sought by a group of trade associations, employers and a workers' compensation insurer.

OSHA now expects employers to revise their policies to test only when the use of drugs likely contributed to the underlying workplace accident. Safety incentive and disciplinary policies should also be revised so that employees are not penalized or reprimanded simply because an accident occurred.

Under the new rule, OSHA can cite an employer for retaliation or a retaliatory policy, without waiting until 30 days after an employee complaint.

OSHA is preparing educational materials to provide further guidance on this new rule, but for now employers can begin the following:

- Inform employees of their right to report work-related injuries and illnesses free from retaliation by displaying OSHA's Job Safety and Health poster, which can be found [here](#);
- Maintain a procedure for reporting work-related injuries and illnesses that does not deter or discourage reporting and review policies that may discourage reporting; and
- Refrain from retaliating against employees for reporting work-related injuries or illnesses.

If you have questions regarding the implementation of the new OSHA rule now in effect or the upcoming reporting procedures, please contact your Lathrop Gage attorney or the attorneys listed above.