



H.R.2428- “The Accurate Workplace Injury and Illness Records Restoration Act”

The Accurate Workplace Injury and Illness Records Restoration Act reinstates the Occupational Safety and Health Administration’s (OSHA) authority to enforce an employer’s *continuing* obligation to make and maintain accurate workplace injury and illness records. This legislation creates no new employer recordkeeping or reporting obligations; it simply clarifies OSHA’s authority to enforce longstanding OSHA requirements when there is a *continuing* violation.

The bill accomplishes this by:

- 1) Clarifying that the Occupational Safety and Health Act’s (OSHA Act) six-month statute of limitations will be tolled if there is a *continuing* violation of the OSHA Act that is longer than six months;
- 2) Directing OSHA to clarify its recordkeeping rule to make explicit that employers have a *continuing* obligation to make and maintain accurate injury and illness records;
- 3) Providing specific authority for the rule.

Accurate records are essential to identifying and correcting workplace hazards which cause serious workplace injuries. When such injuries are not accurately recorded, patterns of injuries and illnesses are masked from the employer, employees and OSHA, and needed corrective actions are not flagged to save a life or a limb.

The *Accurate Workplace Injury and Illness Records Restoration Act* would:

- 1) **Amend the six month statute of limitations in § 9(c) of the OSHA Act to clarify that a violation continues to occur** – and the six-month clock will not start running – for as long as obligations under the OSHA Act remain unsatisfied. The legislation leaves in place the existing six-month statute of limitations, which begins to run upon the violation of a discrete obligation (*e.g.* failure to de-energize equipment before an employee conducts a repair) or abatement of a violation of an ongoing obligation. This change will restore OSHA’s 45-year precedent prior to an adverse 2012 D.C. Circuit Court of Appeals decision that blocked OSHA’s ability to enforce continuing violations of its recordkeeping rule.
- 2) **Require OSHA to issue a new regulation within 180 days of enactment** which clarifies that an employer’s obligation to make and maintain accurate injury and illness records is a *continuing* obligation, and that such duty does not expire solely because the employer fails to create the necessary records when first required to do so.
- 3) **Provide “specific authorization” for the rule**, pursuant to the Congressional Review Act (CRA). The CRA states that an overturned rule “may not be reissued in substantially the same form...unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.”

BACKGROUND

Due to an adverse [D.C. Circuit Court of Appeals opinion in 2012](#), OSHA was blocked from citing employers for injury and illness recordkeeping violations that began more than six months earlier, even though the violations were continuing unabated. The three judge panel in that case held that the OSHA Act's six-month statute of limitations started to run on the date the employer first had to record a serious workplace injury (which is seven days after the recordable injury), even though the employer continued to fail to record many workplace injuries for several years. Since OSHA only has the resources to inspect each workplace once every one hundred fifty-four years, on average, this interpretation of the Act provides little deterrent for employers who chose to under-record injuries. One member of the court's panel held that OSHA's existing recordkeeping regulation did not expressly state there was a *continuing* obligation.

- To address that particular concern about the regulation, OSHA issued a rule entitled *Clarification of Employers' Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness* in December 2016, which made clear that an employer's obligation to make and maintain workplace injury and illness records is a continuing obligation, and that such duty does not expire solely because the employer fails to create the necessary records when first required to do so.
- That rule was invalidated in April 2016, when President Trump signed a joint Resolution of Disapproval which had been adopted by the House and Senate under the Congressional Review Act (P.L. 115-21). House and Senate proponents argued that OSHA had exceeded its statutory authority in issuing a new rule that permitted citations outside the six-month statute of limitations. Opponents noted that the rule imposed no new recordkeeping obligations or burdens on employers; it simply clarified the ongoing nature of OSHA's recordkeeping requirements. This legislation clarifies OSHA's statutory authority to issue citations for violations that continue for more than six months.
- As a consequence of the D.C. Circuit's decision and the Resolution of Disapproval, there is a safe harbor for under recording of workplace injuries. Since OSHA's new rule was vacated under the Congressional Review Act, OSHA cannot issue a substantially similar rule absent new authorizing legislation.