

November 29, 2016

OSHA Anti-Retaliation Injunction Denied

On November 28, 2016, the U.S. District Court for the Northern District of Texas denied a preliminary injunction filed against the Occupational Safety and Health Administration (OSHA) regarding the anti-retaliation provisions of OSHA's new Improved Tracking of Workplace Injuries and Illnesses Regulation.

OSHA announced new regulations in May 2016 addressing reporting of injuries and illnesses. These rules included certain anti-retaliation provisions that potentially restrict safety incentives, immediate injury reporting rules, and post-accident drug testing. The rules initially were to take effect in August.

We previously explained that OSHA announced in a press release on July 13, 2016, that it was pushing back the effective date of the anti-retaliation provisions of the final rule from August 10 to November 1, 2016. The purpose of the delay was so OSHA could conduct "additional outreach and provide educational materials and guidance for employers."

Then, we announced on October 20, 2016, that the federal court in the Northern District of Texas prompted OSHA to self-impose an additional delay of the anti-retaliation provisions of the final rule until December 1, 2016. Accordingly, the new deadline for the effective date of the anti-retaliation provisions in the final rule is December 1, 2016. A copy of OSHA's memorandum extending the deadline is available [here](#).

Now that the Texas federal district court has denied the preliminary injunction, OSHA's regulations take effect on December 1. After that date, OSHA may investigate complaints by employees that suffered retaliation for reporting an injury by virtue of an employer's policies, such as post-accident testing, incentive programs (where employees as individuals or as a group lose, or do not receive, certain pay), or late reporting of an injury by the employee.

Starting December 1, OSHA will be able to issue citations and penalties and require abatement, including reinstatement

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and financial compensation to terminated employees, order payment of revoked incentives and other remedies to make the employee whole for violations of the anti-retaliation provisions of the final rule. Employers are also required to provide information to employees regarding injury reporting and the requirements that prevent employers from retaliating against employees.

While the decision only denies the preliminary injunction, and a permanent injunction is still a possibility later, the regulation will take effect this week, causing many employers to change their policies pending the outcome of the case. There may also be regulatory changes following the change of the presidential administration early next year. But for now, these regulations are the law, and employers should therefore review their policies immediately.

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