

The Bulletin

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The Employers' Association
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New OSHA Rule Clarifies Employers' Injury and Illness Recordkeeping Obligations

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On December 19, 2016, the Occupational Health and Safety Administration ("OSHA") issued a final rule designed to "clarify" its position that employers have a continuing obligation to record and maintain an accurate record of recordable workplace injuries and illnesses beyond the six-month statute of limitations in the Occupational Safety and Health Act of 1970. This new rule allows OSHA to issue citations to employers for failing to record an illness or injury for up to six months after the five year retention period for the record would have expired.

Before 2012, OSHA has a longstanding practice of treating employers' failure to record injuries and illnesses as a continuing violation. This allowed OSHA to issue citations for failure to record for five years (the required retention period for the record if it had been created) plus an additional six-months the statute of limitations for violations). In 2012 the United States Court of Appeals for the D.C. Circuit held that OSHA cannot cite an employer for failure to record work-related injuries and illnesses more than six-months after the initial obligation to record occurred. *AKM, LLC v. Secretary Labor*, 675 F.3d 752 (D.C. Cir. 2012). The court rejected OSHA's characterization of the recordkeeping requirement as a continuing obligation.

OSHA issued the new rule in response to the *AKM* decision, stating that it disagreed with the court's reading of the law, but "agrees that its recordkeeping regulations were not clear with respect to the continuing nature of the employer's recordkeeping obligations." The rule revised 29 C.F.R. 1904(b)(3) to state:

You must enter each and every recordable injury or illness on the OSHA 300 Log and on a 301 Incident Report within seven (7) calendar days of receiving information that the recordable injury or illness occurred. **A failure to record within seven days does not extinguish your continuing obligation to make a record of the injury or illness and to maintain accurate records of all recordable injuries and illnesses in accordance with the requirements of this part. This obligation continues throughout the entire record retention period described in Section 1904.33.**

OSHA's press release regarding the new rule states that the rule "simply returns us to the standard practice of the last 40 years" and does not impose any new reporting obligations. But OSHA may review employer illness and injury records more carefully and return to bringing large recordkeeping enforcement actions that allege multiple violations over a period of years.

The new rule may face legal challenges based on the reasoning of the *AKM* decision. Congress and the new President might also try to rescind the rule. Although the future of the rule and related enforcement actions may be uncertain, employers should be diligent about recording, maintaining, reviewing and ensuring the accuracy of their injury and illness records.

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3 Big Myths About Workplace Learning

By Todd Tauber, Vice President of Product Marketing for Degreed.



Myth 1: Workers don't have time for learning. Truth: People will make time to learn if it fuels their careers or enriches their lives. Bersin by Deloitte reported that 88 percent of learning professionals believe employees don't have or make the time to engage with corporate learning.

Our survey respondents spend, on average, just 37 minutes per week on employer-provided training, but they also put in 3.3 hours per week learning on their own. Nearly two-thirds said they would find more time if they received some kind of credit or recognition they could leverage for professional growth.

That indicates most people will readily invest in their own learning and development — if they believe it will help them be better at their jobs, advance their careers or enrich their lives. So, don't just train workers to follow processes and comply with policies. To really engage workers, help them grow, evolve and stay marketable.

Myth 2: Traditional training methods, like classroom training and online courses, are obsolete. Truth: Traditional methods are not obsolete. They're just incomplete. It's become fashionable to say that learning is wildly out of sync with how people learn and that the only real remedy is a revolution. Self-service micro learning, many say, is the future. It's not that simple. Bite-sized content dominates learning habits now. In any given week, 85 percent of people we surveyed said they learn something for work through online search. Nearly 70 percent said they develop themselves by reading articles or blogs, and more than half use videos.

Formal training, however, is still an essential part of how workers develop new skills and keep their old ones fresh. Around 70 percent of people we surveyed indicate they take live, virtual or e-learning courses from their employers at least once a year. And many do so every few months. To build a culture of learning, learning leaders need it all now: business-led training and self-service learning, formal and informal, job training and career development, courses and resources.

Myth 3: The learning function owns responsibility for employee development. Truth: Responsibility for learning is shared between the learning function, managers and employees. According to CEB, learning leaders believe that four in five workers are "bad at learning" — that they don't know when to ask for help or share what they know, how to seek out relevant knowledge, or how to extract value from information. We are not so sure. Our research suggests that most employees start their learning journeys with social or search, not in the learning department.

That doesn't mean people don't need learning and development. Those who said they have adequate guidance are significantly more satisfied with their employer's learning opportunities than those who don't have any direction. Instead, learning teams have two roles now: The traditional role: creating, buying and delivering training; and a new, indirect role: giving meaning to self-serve learning by building and curating an environment and a culture that empowers workers to discover and connect with the right people, experiences and resources on their own.

Learning follows the path of least resistance, so now, speed, simplicity and easy access matter most. Before learning leaders do anything, they should get to know their workforce a lot better. Evaluate whether they have not just the right strategy and tools, but also the capabilities needed to build the learning culture they want.

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