

Despite Challenge From Industry Groups, New OSHA Standards Went Into Effect On December 1, 2016

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In addition to waging a successful challenge of the Department of Labor's (DOL) overtime regulations, industry groups had also fought the implementation of Occupational Safety and Health Administration's (OSHA) relatively new injury reporting and anti-retaliation standards. On November 29, 2016, a federal court in Texas denied a motion seeking to prevent these standards from going into effect on December 1, 2016, essentially allowing the changes to move forward. Among other things, these standards require that employers provide notice to employees that they have the right to report injuries and illnesses free from retaliation. Employers can satisfy this obligation by posting OSHA's "It's the Law!" poster. Employers that choose to download the poster should make sure that they print off an 8.5 x 14 inch copy of the poster using a durable and glossy paper. Employers should also check their handbooks for provisions stating that employees will be disciplined if they do not "immediately" report an injury or an illness, as such policies may be problematic under OSHA's new standards. Employers should review drug testing policies and revise policies stating that employees will "automatically" be drug tested if they report an injury or are involved in an accident, as OSHA views automatic post-accident drug testing to be improper, as previously reported. Going forward, employers should look to see whether OSHA has its online reporting website running by February 1, 2017, which is the next step towards the electronic reporting required under these rules. The lawsuit challenging these standards remains pending, and it is not clear the extent to which the change in the administration will affect OSHA's priorities in the next few years.

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