



OSHA Recordkeeping – Civil and Criminal Liabilities in 2015

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Presenters



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Mr. Malter has been a health and safety professional for more than 35 years. He has served as a Compliance Officer for the Occupational Safety and Health Administration (OSHA), as an Industrial Hygienist for the US Department of Energy, as the Industrial Hygiene Manager for the Santa Fe Railway Company and as the Director, Health, Safety and Transportation for Waste Management, Inc. He is a Certified Industrial Hygienist, Certified Safety Professional, Licensed Industrial Hygienist, Registered Occupational Hygienist and a Certified Professional Environmental Auditor in Health and Safety. Mr. Malter has served as President of the Chicago Section of the American Industrial Hygiene Association, as Chairman of Environmental Industries Association Safety Committee and has participated in several committees that have developed national safety standards.

Who is Covered by the Revised Recordkeeping Regulation?



- If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records
 - Unless, OSHA or the Bureau of Labor Statistics (BLS) informs you in writing that you must keep records.
- If your company had more than ten (10) employees at any time during the last calendar year, you must keep OSHA injury and illness records unless your establishment is classified as a partially exempt industry
 - The partial exemption for size is based on the number of employees in the entire company and not on the size of an individual business establishment.
- If your business establishment is classified in a specific low hazard listed in Appendix A, you do not need to keep OSHA injury and illness records
 - Unless, OSHA or the Bureau of Labor Statistics (BLS) informs you in writing that you must keep records.
- All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any workplace incident that results in a fatality, in-patient hospitalization, amputation, or loss of an eye.

Appendix A

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS), except as specified on Slide 4.

NAICS Code	Industry Description	NAICS Code	Industry Description
4412	Other Motor Vehicle Dealers	5411	Legal Services
4431	Electronics and Appliance Stores	5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
4461	Health and Personal Care Stores	5413	Architectural, Engineering, and Related Services
4471	Gasoline Stations	5414	Specialized Design Services
4481	Clothing Stores	5415	Computer Systems Design and Related Services
4482	Shoe Stores	5416	Management, Scientific, and Technical Consulting Services
4483	Jewelry, Luggage, and Leather Goods Stores	5417	Scientific Research and Development Services
4511	Sporting Goods, Hobby, and Musical Instrument Stores	5418	Advertising and Related Services
4512	Book, Periodical, and Music Stores	5511	Management of Companies and Enterprises

Appendix A

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NAICS Code	Industry Description	NAICS Code	Industry Description
4531	Florists	5611	Office Administrative Services
4532	Office Supplies, Stationery, and Gift Stores	5614	Business Support Services
4812	Nonscheduled Air Transportation	5615	Travel Arrangement and Reservation Services
4861	Pipeline Transportation of Crude Oil	5616	Investigation and Security Services
4862	Pipeline Transportation of Natural Gas	6111	Elementary and Secondary Schools
4869	Other Pipeline Transportation	6112	Junior Colleges
4879	Scenic and Sightseeing Transportation, Other	6113	Colleges, Universities, and Professional Schools
4885	Freight Transportation Arrangement	6114	Business Schools and Computer and Management Training
5111	Newspaper, Periodical, Book, and Directory Publishers	6115	Technical and Trade Schools

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NAICS Code	Industry Description	NAICS Code	Industry Description
5112	Software Publishers	6116	Other Schools and Instruction
5121	Motion Picture and Video Industries	6117	Educational Support Services
5122	Sound Recording Industries	6211	Offices of Physicians
5151	Radio and Television Broadcasting	6212	Offices of Dentists
5172	Wireless Telecommunications Carriers (except Satellite)	6213	Offices of Other Health Practitioners
5173	Telecommunications Resellers	6214	Outpatient Care Centers
5179	Other Telecommunications	6215	Medical and Diagnostic Laboratories
5181	Internet Service Providers and Web Search Portals	6244	Child Day Care Services
5182	Data Processing, Hosting, and Related Services	7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
5191	Other Information Services	7115	Independent Artists, Writers, and Performers
5211	Monetary Authorities - Central Bank	7213	Rooming and Boarding Houses
5221	Depository Credit Intermediation	7221	Full-Service Restaurants

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NAICS Code	Industry Description	NAICS Code	Industry Description
5222	Nondepository Credit Intermediation	7222	Limited-Service Eating Places
5223	Activities Related to Credit Intermediation	7224	Drinking Places (Alcoholic Beverages)
5231	Securities and Commodity Contracts Intermediation and Brokerage	8112	Electronic and Precision Equipment Repair and Maintenance
5232	Securities and Commodity Exchanges	8114	Personal and Household Goods Repair and Maintenance
5239	Other Financial Investment Activities	8121	Personal Care Services
5241	Insurance Carriers	8122	Death Care Services
5242	Agencies, Brokerages, and Other Insurance Related Activities	8131	Religious Organizations
5251	Insurance and Employee Benefit Funds	8132	Grantmaking and Giving Services
5259	Other Investment Pools and Funds	8133	Social Advocacy Organizations
5312	Offices of Real Estate Agents and Brokers	8134	Civic and Social Organizations
5331	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	8139	Business, Professional, Labor, Political, and Similar Organizations

Establishments Newly Required to Keep Records


NAICS CODE	Title of NAICS Code	NAICS CODE	Title of NAICS Code
3118	Bakeries and tortilla manufacturing	5612	Facilities support services
4411	Automobile dealers	5617	Services to buildings and dwellings
4413	Automotive parts, accessories, and tire stores	5619	Other support services
4441	Building material and supplies dealers	6219	Other ambulatory health care services
4452	Specialty food stores	6241	Individual and family services
4453	Beer, wine, and liquor stores	6242	Community food and housing, and emergency and other relief services
4539	Other miscellaneous store retailers	7111	Performing arts companies
4543	Direct selling establishments	7113	Promoters of performing arts, sports, and similar events
5311	Lessors of real estate	7121	Museums, historical sites, and similar institutions
5313	Activities related to real estate	7139	Other amusement and recreation industries
5322	Consumer goods rental	7223	Special food services
5324	Commercial and industrial machinery and equipment rental and leasing	8129	Other personal services
5419	Other professional, scientific, and technical services		

Who is Covered by the Recordkeeping Regulation?

- The partial industry classification exemption applies to individual business establishments.
- If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.



Fatalities, Hospitalization, Amputations and Loss of an Eye

- All work related fatalities must be recorded on the OSHA 300 and on a 301 (or equivalent) form.
- **As of January 1, 2015**, all employers must report 
 - All work-related fatalities within 8 hours.
 - All work-related inpatient hospitalizations of **one** ~~three~~ or more employees, **all amputations and all losses of an eye within 24 hours**.



Fatalities, Hospitalization, Amputations and Loss of an Eye



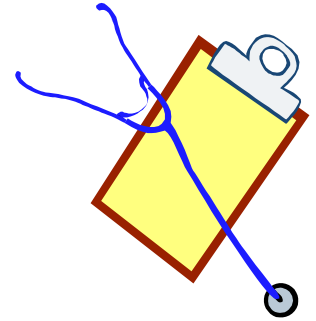
- You must orally **report the fatality/multiple hospitalization by telephone or in person to the Area Office** of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident.
- If you can't talk to a person at the Area Office, you must report the fatality, hospitalization, amputation or loss of an eye incident using either the
 - OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742) or
 - **Reporting application (in development) located on OSHA's public website www.osha.gov.**



Fatalities, Hospitalization, Amputations and Loss of an Eye

You must give OSHA the following information for each fatality or multiple hospitalization incident:

- (i) The establishment name;
- (ii) The location of the incident;
- (iii) The time of the incident;
- (iv) The type of the reportable event (i.e., fatality, in-patient hospitalization, amputation or loss of an eye);
- (v) The number of employees who suffered a fatality, in-patient hospitalization, amputation or loss of an eye;
- (vi) The names of those employees;
- (vii) Your contact person and his or her phone number; and
- (viii) A brief description of the work-related incident.



OSHA Recordkeeping

Scope of Documents for Recordkeeping Inspection

- OSHA Forms 300, 300A and 301
- Medical records
- Worker's compensation records
- Insurance records
- Payroll/absentee records
- Company safety incident reports
- Company first aid logs
- Alternate duty rosters
- Disciplinary records relating to injuries and illness





OSHA Recordkeeping

Scope of Recordkeeping Inspection

- Interviews of designated recordkeeper, employees, management, first aid providers and healthcare professionals.
- Limited walk around inspection of main plant operations area.
- Possible expansion of scope of inspection or referral for inspection to other plant areas that may pose risks.
 - Plain view doctrine

OSHA Recordkeeping

Civil

- Potential citations for under reporting or other errors
 - Other than serious
 - Serious
 - Willful (violation-by-violation citation)
 - Repeat
 - Failure to Abate

Criminal

- Liability of Employer
- Liability of Management Representative for false certification



What are the Rules for Recording Injuries & Illnesses?

- Is the case work related?
- Is this a new case?
- Does the case meet the general or specific recording criteria?



Is the Case Work Related?

You must consider an injury or illness to be work-related if:

An event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness.

- Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless a listed exception specifically applies.
- OSHA defines the work environment as the establishment and other locations where one or more employees are working or are present as a condition of their employment (e.g., business travel).
- The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work (e.g., computer work at home).



Work-Related Decisions – General



4. How do I decide whether an injury or illness is work-related if the employee is on travel status at the time the injury or illness occurs?

Injuries and illnesses that occur while an employee is on travel status are work-related if, at the time of the injury or illness, the employee was engaged in work activities “in the interest of the employer.”

- Examples of such activities include travel to and from customer contacts, conducting job tasks, and entertaining or being entertained to transact, discuss, or promote business (work-related entertainment includes only entertainment activities being engaged in at the direction of the employer).

Work-Related Decisions – General



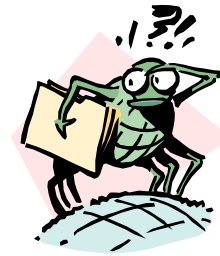
5. How do I decide if a case is work-related when the employee is working at home?

Injuries and illnesses that occur while an employee is working at home, including work in a home office, will be considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting.

- If an employee drops a box of work documents and injures his or her foot, the case is considered work-related.
- If an employee's fingernail is punctured by a needle from a sewing machine used to perform garment work at home, becomes infected and requires medical treatment, the injury is considered work-related.
- If an employee is injured because he or she trips on the family dog while rushing to answer a work phone call, the case is not considered work-related.
- If an employee working at home is electrocuted because of faulty home wiring, the injury is not considered work-related.

03/30/2009 - Determining work-relatedness for injuries in the home when telecommuting.

Is this a new case?



This is a new case if:

- The employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body, or
- The employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

General Recording Criteria

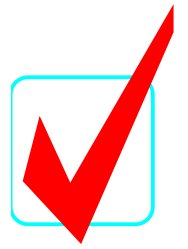


You must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following:

- Death
 - Loss of consciousness
 - Days away from work
 - Restricted work or transfer to another job
 - Medical treatment beyond first aid
 - A significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not meet one of the other criteria for recording
- 05/08/2009 - Clarification on when administering oxygen would result in a recordable injury.
- 01/25/2010 - Clarification of the term abnormal condition as used in the Recordkeeping standard.
- 05/21/2010 - Therapeutic exercise is considered medical treatment for recordkeeping purposes.
- 04/18/2011 - Clarification on recordability when trigger point injections are used for medical treatment and for diagnostic procedures.
- 05/20/2011 - Clarification on whether an exercise regime is first aid or medical treatment.



Loss of Consciousness



You must record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time the employee remains unconscious.



Days Away from Work



When an injury or illness involves one or more days away from work:

- You must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of calendar days away from work in the number of days column.

If the employee is out for an extended period of time,

- You must enter an estimate of the days that the employee will be away, and update the day count when the actual number of days is known.

Restricted Work & Job Transfers



When an injury or illness involves restricted work or job transfer but does not involve death or days away from work:

- You must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction, and
- Enter the number of restricted or transferred days in the restricted workdays column.

Restricted work occurs when, as the result of a work-related injury or illness:

- (A) You keep the employee from performing one or more of the routine functions of his or her job, or from working the full workday that he or she would otherwise have been scheduled to work; or
- (B) A physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of his or her job, or not work the full workday that he or she would otherwise have been scheduled to work.
- **For recordkeeping purposes, an employee's routine functions are those work activities the employee regularly performs at least once per week.**

Restriction from restricted work activities – 04/25/06 Interpretation.

Lost work days are recorded when no restricted work is available - 06/23/2006 Interpretation.

Job Transfers



If you assign an injured or ill employee to a job other than his or her regular job for part of the day, the case involves transfer to another job.

- Note: This does not include the day on which the injury or illness occurred.



Clarification of several recordkeeping scenarios regarding days away from work, restricted work activity, and work-relatedness. 08/26/2008

New Criteria for First Aid



For the purposes of Part 1904, "first aid" means the following:

- (A)** Using a nonprescription medication at nonprescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for recordkeeping purposes, Prophylactic use of antibiotics – 3/10/05 Interpretation, Clarification of several recordkeeping scenarios regarding the use of prescription medication in treating a work-related case - 02/06/2007 Interpretation);
- (B)** Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);
- (C)** Cleaning, flushing or soaking wounds on the surface of the skin;
- (D)** Using wound coverings such as bandages, Band-Aids™, gauze pads, etc. or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc. are considered medical treatment); (**Liquid Bandage - 8/8/2002 Interpretation**);
- (E)** Using hot or cold therapy;
- (F)** Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);

Medical Treatment



If a work-related injury or illness results in medical treatment beyond first aid, you must record it on the OSHA 300 Log.

- “Medical treatment” means the management and care of a patient to combat disease or disorder.

Where an employee is instructed by a physician to remain off or restricted at work until a diagnostic test is performed, that time is recordable regardless of the result of the diagnostic test - 03/19/03 Interpretation.

OSHA's recordkeeping requirements permit an employer to choose between two conflicting medical opinions. When an employer receives contemporaneous recommendations from two or more physicians or other licensed health care professionals about the need for medical treatment, the employer may decide which recommendation is the most authoritative and record the case based on that recommendation. However, once a prescription medication has been provided, the case must be recorded - 11/15/05 Interpretation.

Recording an injury when employer is provided with different medical opinions - 04/03/2007 Interpretation.

09/24/2010 - Clarification on most authoritative when multiple medical opinions are provided.

If the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer:

- You enter a check mark in the box for cases where the employee received medical treatment but remained at work and was not transferred or restricted.



Medical Treatment

The following are not considered medical treatments and are NOT recordable:

- Visits to a doctor or health care professional solely for observation or counseling;
- Diagnostic procedures, including administering prescription medications that are used solely for diagnostic purposes; and
- Any procedure that can be labeled first aid.



Significant Injury or Illness



What is a “significant” diagnosed injury or illness that is recordable under the general criteria even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness?

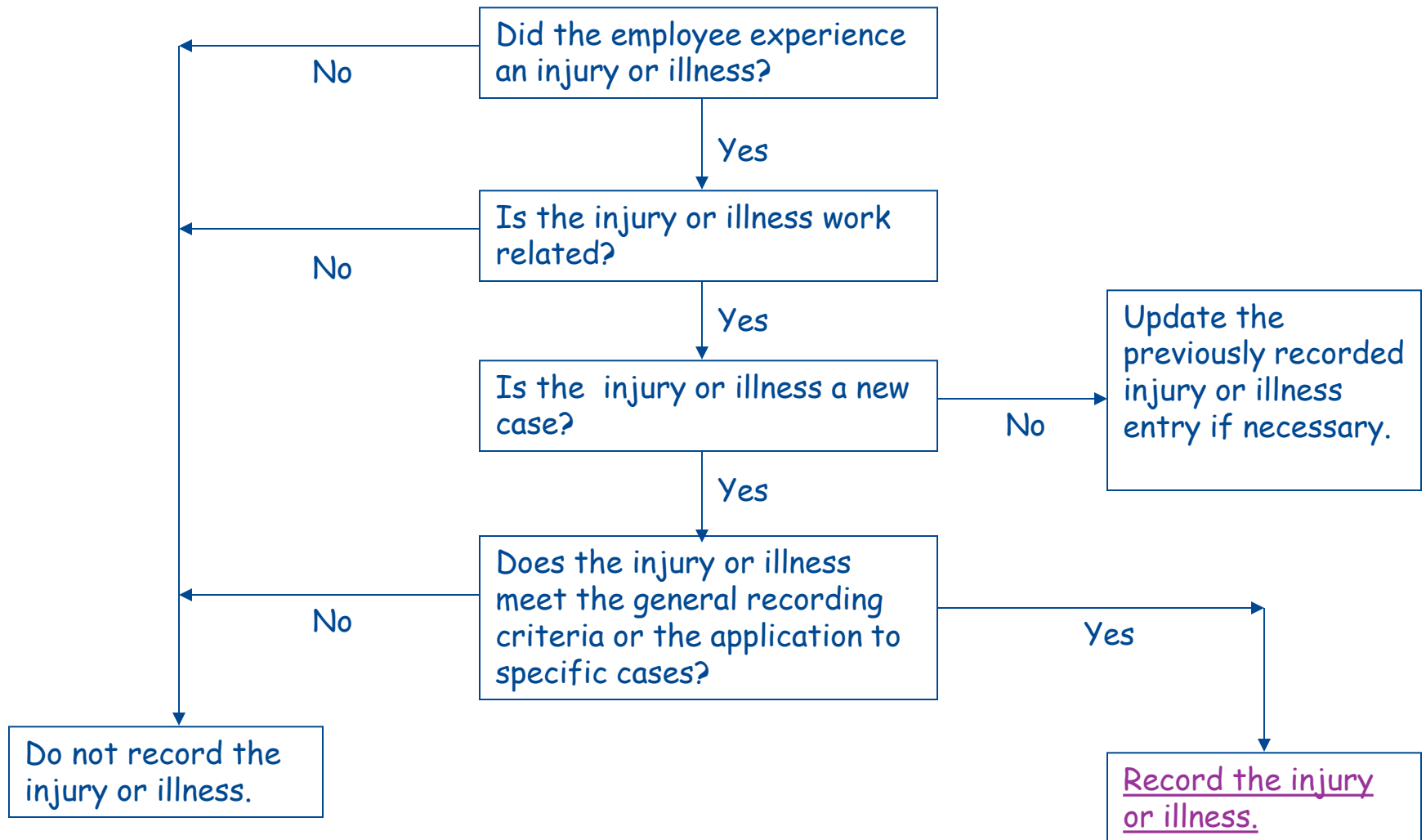
Work-related cases involving:

- cancer,
- chronic irreversible disease,
- a fractured or cracked bone, or
- a punctured eardrum



must always be recorded under the general criteria at the time of diagnosis by a physician or other licensed health care professional.

OSHA 300 Flow Chart for Recordability



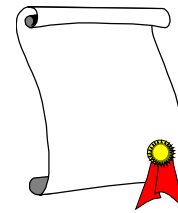


Potential Sticky Issues

The following are examples of some sticky issues that may arise:

- Parking lots, cafeterias, bathrooms
- Insects, dogs, rodents
- Over-the-Counter medicine
- Eye drops

Annual Summary



At the end of each calendar year, you must:

- (1) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any deficiencies identified
- (2) Create an annual summary of injuries and illnesses recorded on the OSHA 300 Log
- (3) Certify the summary – the summary must be certified by:
 - a) an owner the company;
 - b) an office of the company;
 - c) the highest ranking company official working at the establishment; or
 - d) the immediate supervisor of the highest ranking company official working at the establishment
- (4) Post the annual summary

Employee Involvement

- You must inform each employee of how he or she is to report an injury or illness to you.
- You must provide limited access to your injury and illness records for your employees and their representatives.





Federal OSHA vs. State OSHA

- It is important to understand the differences between Federal OSHA and state-plan OSHA states.
- Under Federal OSHA, the statute of limitations for a recordkeeping violation is six months and seven days because of the *Volks* decision, *AKM LLC, doing business as Volks Constructors v. Sec. of Labor*, 675 F.3d 752 (D.C. Cir. 2012).
- State-plan states may not adhere to OSHA. As a result, they can issue a recordkeeping violation for the entire 5-year period an employer is required to retain the 300 logs.

Summary and Closing Comments

Key OSHA Recordkeeping requirements:

- Use OSHA 300 and 301 (or equivalent to the 301).
- Post OSHA 300A Summary by February 1 and until April 30, each year.
- Record cases within 7 calendar days.
- Record all Recordable Hearing Loss cases (for a persistent STS at 10dB).
- All needlestick/sharp injury cases involving blood or other potentially infectious fluids must be recorded on the OSHA 300 and on a Sharps Log (or an equivalent record).
- Count “days away” or “days restricted or transferred” as calendar days.
- Cap “days away” at 180 days, instead of recording all “days away.”
- Do not count “days away” or “days restricted or transferred” on the day that the injury or illness occurred.
- Medical treatment includes everything except: visits to a doctor or health care professional solely for observation or counseling; diagnostic procedures, including administering prescription medications that are used solely for diagnostic purposes; and any procedure that can be labeled first aid.



THANK YOU