

## OSHA Delays Enforcement of New Rule's Anti-Retaliation Provisions

By ***Nathan Pangrace***, Associate

On July 13, 2016, the Occupational Safety and Health Administration (OSHA) announced it was delaying enforcement of the anti-retaliation provisions in its new injury and illness tracking rule. Generally, the new rule requires large employers to electronically submit information on workplace injuries to OSHA on an annual basis. OSHA intends to post the data it collects on its public website.

The new rule also includes whistleblower protections, which require employers to inform workers of their right to report work-related injuries and illnesses without fear of retaliation, and implement procedures for reporting injuries and illnesses that are reasonable and do not deter workers from reporting. The whistleblower protections were originally scheduled to begin August 10, 2016, but enforcement will now begin November 1, 2016. There is no change in the effective date for electronic reporting provisions.

According to OSHA, the three-month delay was necessary "to conduct additional outreach and provide educational materials and guidance for employers." More likely than not, however, the delay is due to a lawsuit recently filed against OSHA in Texas federal court over the new rule. (*TEXO ABC/AGC, et al. v. Thomas, et al.*, No. 3:16-CV-1998 (N.D. TX July 8, 2016)).

In their complaint, the National Association of Manufacturers and other industry groups allege the anti-retaliation provisions go too far in limiting post-accident drug testing. Generally, the new rule prohibits employers from using drug testing, or the threat of drug testing, as a form of retaliation against employees who report injuries or illnesses. The plaintiffs argue this provision is an overreach of the agency's authority and limiting such tests will hamper an employer's recourse to keep their workplace safe. The suit seeks a preliminary injunction prohibiting OSHA from implementing the anti-retaliation provision limiting drug testing.

We will keep you updated regarding the status of this lawsuit and any further delays in OSHA's new injury and illness tracking rule. Should you have any questions on this matter, please contact one of the listed Roetzel attorneys.

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