

Timber! New OSHA Log Falls On Employers

By Mark A. Lies, II

Since the inception of the Occupational Safety and Health Act of 1970 (the “Act”), many employers (those with more than 10 employees who are in a high-hazard industry) have been required to maintain the OSHA 200 Log and certain related documents to record occupational injuries and illnesses. During the ensuing years, most employers have become relatively familiar with these responsibilities and have made a good-faith effort to comply. In those instances, however, where employers have either negligently or intentionally failed to properly maintain the Log, OSHA has issued significant citations involving willful violations with six-figure monetary penalties.

Clinton Era Regulation

In the waning days of the Clinton Administration, the agency issued significant revisions to 29 CFR 1904 regarding *Recording and Reporting Occupational Injuries and Illnesses* with an effective date of January 1, 2002. Initially, in conjunction with the new Administration’s review of all new proposed regulations, it was thought that the Administration would halt the regulation from becoming effective. This belief was further heightened when the OSHA ergonomic standard was vacated by Congress under the Congressional Review Act in March, 2001 because the new OSHA 300 Log utilized definitional language for musculoskeletal disorders (MSDs) which was an integral part of the defeated ergonomic standard. According to many long-time OSHA representatives, the Log would not become effective until January 1, 2003 at the earliest.

Employer Surprise

On June 29, 2001, the OSHA National Office posted an informational release on its web site informing unsuspecting employers (and also catching many local OSHA offices by surprise) that the rule was indeed going to become effective on January 1, 2002, with two potential significant exceptions:

- recording of occupational hearing loss based on the occurrence of a Standard Threshold Shift (“STS”) in hearing acuity (Section 1904.10); and
- recording of a work-related “musculoskeletal disorder” (“MSD”) which must be recorded on the Log (Section 1904.12) until the definition of what constitutes an MSD is clarified.

As to these exceptions, OSHA is asking for public comment by September 4, 2001 and proposes to delay their effective date until January 1, 2003. In all other respects, the Log will become effective on January 1, 2002. To view OSHA’s written explanation, you may go to its web site at www.osha.gov. The explanation is also contained in the *Federal Register*, 66 FR 35113 (July 3, 2001).

Employer Must Play Catch Up

Unfortunately, most employers who are required to maintain the Log must now play catch-up in less than five months, including the following:

- obtain the new Log and related material,
- comprehend the new accompanying regulations 66 FR 6122, (January 19, 2001);
- train appropriate employees on how to complete the Log;
- engage in a new interactive process involving all employees involving how to report an injury or illness (29 CFR 1904.35);
- develop new procedures to allow employee access to OSHA injury and illness records (29 CFR 1904.35); and
- designate a “company executive” who must certify that he or she has examined the Log and reasonably believes that the annual summary is correct and complete (29 CFR 1904.32) (which can expose this executive to criminal liability for a false certification).

This may be a daunting task for many employers and errors will no doubt occur in the record keeping until employers develop familiarity with the new regulations.

Old Guidelines Ineffective

The new regulations are intended to be user friendly and, consistent with OSHA’s new approach, are written in a question and answer format. Likewise, the OSHA 300 Log compliance packet, which can be downloaded from its web site, contains instructions on how to complete the Log.

Unfortunately, for those employees who were intimately involved in completing the OSHA 200 Log, they will have to be re-educated because:

- the OSHA Recordkeeping Guidelines for Occupational Injuries and Illnesses issued in 1986, the so-called “Blue Book” which was used as a bible to complete the Log, will no longer be followed; and
- the existing OSHA Interpretative Letters on how to complete the Log are no longer effective.

Key Provisions

It is beyond the scope of this article to discuss each and every aspect of the new regulations but the table included herewith sets out the most significant changes. The most important changes include:

- replacing the term “lost workdays” recording criteria with “days away” or “days restricted or transferred”
- counting days as calendar days rather than scheduled workdays
- defining routine duties for restricted work purposes
- defining what constitutes medical treatment beyond first aid

- adding requirements relating to exposure to bloodborne pathogens
- requiring certification of annual summary
- creating a separate privacy log for certain cases

Strategy

Since employers only have a few months to prepare for compliance, it is essential to commence action at the earliest opportunity. After obtaining a copy of the regulation and the Log package, employers should develop a timetable to train those employees responsible for maintaining the Log. All employees must be trained in how to properly report injuries and illnesses and how to access this information if they exercise such right. Documentation should be maintained to reflect these efforts. If this good-faith action is taken, employers should be able to avoid liability for citations.

The author is developing a training program which he will utilize to assist employers with compliance. If you have an interest, please contact him to discuss the program.