



The impact of repeal of OSHA's extended record keeping requirement on New York construction industry - by Joshua Spitalnik

May 02, 2017 - Long Island

Joshua Spitalnik, The Law Office
of Joshua D. Spitalnik

Over the past several months, President Trump and the Republican-controlled U.S. congress have adopted an agenda of deregulating businesses in order to energize the economy. One of the tools being utilized to drive this agenda is the Congressional Review Act, which has allowed the administration to overturn various regulations enacted during the late stages of President Obama's administration.

Some of the repealed regulations were designed to specifically target the construction industry, including the Department of Labor's (DOL) enforcement of Occupational Safety and Health Administration's (OSHA) recordkeeping requirements, commonly referred to as the "Volks Rule."

Under the OSHA legislation, construction companies are required to maintain and report all occupational injuries and illnesses. They are required to complete the OSHA Form 300, which is a log of work-related injuries setting forth the extent and severity of the injury and specific details about the incident. OSHA Form 300A provides a summary of all the incidents for the year, which must be maintained by the company and made available for review by the employees, OSHA and others.

Prior to 2012, a dispute arose as to the length of time that a construction company is required to maintain these records and how far back the DOL can issue penalties for failing to maintain the records. The DOL argued that it was allowed to issue citations and fines for a period dating back 5 years, while construction companies and advocate groups argued that the legislation only provided a six-month lookback period.

In 2012, the U.S. Court of Appeals for the District of Columbia in the case *AKM LLC d/b/a Volks Constructors v. Secretary of Labor*, 675 F.3d 752 (D.C. Cir. 2012) overturned the DOL's interpretation and held that legislation maintained only a six-month statute of limitations for issuing citations for failing to maintain these records.

In response, the Obama Administration issued the “Volks Rule,” which allowed for the DOL to issue continuing violations for a company’s failure to track and maintain these OSHA records for a five-year period.

In March 2017, congress passed H.J. Res. 83, reversing the “Volks Rule.” The legislation was approved by the house of representatives by a vote of 231 to 191, and approved by the Senate by a vote of 50 to 48. President Trump signed the repeal into law on April 3, 2017.

After discussing the effect of this repeal with my construction clients, it appears that there will be no noticeable change to their day-to-day routines. Construction companies are still obligated to fill out their Form 300s and track the incidents of work related injuries with the same level of specificity. In fact, as of January 1 2017, companies now have the added requirement of submitting this information electronically.

Further, these records can be very helpful in reviewing a company’s safety record. Often my clients are asked to provide this information to city, county, and state agencies as well as to sophisticated developers and general contractors.

Aside from the serious toll that construction injuries can have on the individuals involved, construction accidents impact the profitability of the construction project. Smart developers will want to ensure that they hire a general contractor with a proven safety record, while smart contractors and construction managers will want to ensure that their subcontractors also have excellent safety records.

Moreover, if contractors are able to demonstrate a strong track record of worker safety, it is wise for the contractor to keep its records for longer than the six-month period of time prescribed by the newly enacted law to gain a marketing advantage when pursuing new business.

Joshua Spitalnik is the founder of The Law Office of Joshua D. Spitalnik, P.C., Port Washington, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540