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Fifth Circuit Limits OSHA's Authority to Require Mental Illness Recordkeeping

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Employers should take note of a recent Fifth Circuit decision limiting OSHA's authority to require recording of work-related mental health conditions. The ruling has immediate significance for employers in Texas, Mississippi, and Louisiana, and it may provide a roadmap for challenges to OSHA's mental illness recordkeeping requirements in other jurisdictions.

The Dispute

In June 2022, OSHA cited Exxon Mobil for failing to record three cases of post-traumatic stress disorder on the OSHA 300 Log at its Baytown, Texas, refinery. The alleged PTSD cases followed a serious refinery incident in December 2021.

Exxon Mobil had not recorded the cases because it concluded they did not meet the required elements for OSHA recordable mental health conditions. Under 29 C.F.R. 1904.5(b)(2)(ix), mental illnesses are only recordable if:

- The employee voluntarily provides to the employer;
- An opinion from a licensed health care professional;
- With appropriate training and experience;
- And the opinion states the mental illness if work-related.

The Company correctly determined that the supporting medical opinions did not come from licensed healthcare professionals with appropriate training and experience for two of the three instances cited by OSHA. And it relied on a second opinion from a qualified licensed health care professional, as permitted by applicable OSHA guidance, concluding that the employee identified in the remaining cited instance did not have work-related PTSD.

Following a hearing, an administrative law judge vacated two of the three alleged violations but upheld the citation concerning the remaining unrecorded case. Exxon Mobil then petitioned the Fifth Circuit to review that decision.

The appeal raised two principal questions.

1. Does Section 8 of the Occupational Safety and Health Act authorize OSHA to require employers to record

work-related mental illnesses at all?
2. If OSHA has that authority, did the agency properly apply its regulation and guidance to the facts of this case?

The Fifth Circuit's Decision

Relying on *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Fifth Circuit held that the court was required to exercise independent judgment in determining whether OSHA had acted within its statutory authority. In doing so, the court would use "all relevant interpretive tools to determine the best reading of the statute; a permissible reading [was] not enough." The Court ultimately concluded that OSHA did not have statutory authority to mandate the recording of mental illnesses. Applying the "best reading" of the statute, the court determined that OSHA's recordkeeping authority is limited to physical illnesses.

The court based its interpretation on several considerations. First, the court examined the context of the relevant OSH Act provision, 29 U.S.C. § 657(c)(2), which grants OSHA authority to "prescribe regulations requiring employers to maintain accurate records of . . . work-related deaths, injuries, and illnesses." In evaluating the scope of that authority, the Court looked to the context in which the term was used in the Act to divine whether its meaning encompasses mental illness. Because the language of the statute focuses on, among other things, physical harms that can be addressed with first aid, and toxic materials and other physical agents that may cause physical harm, the court found that the term "illness" as used in § 657(c)(2) more logically applies to physical rather than mental ailments.

The court also considered the broader recordkeeping framework's focus on physical workplace dangers. The OSH Act grants OSHA inspectors authority to enter any place of employment and examine "all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein."29 U.S.C. § 657(a). All of which, according to the court, risk physical as opposed to mental harm, supporting a narrow reading of "illnesses," which excludes non-physical, mental illnesses.

Finally, the court scrutinized the contemporaneous dictionary definition of "illness" and, having reviewed the definition in several different dictionaries published around 1970, the year the OSH Act was enacted, found that none of them contemplated non-physical conditions.

Based on that analysis, the court vacated 29 C.F.R. § 1904.5(b)(2)(ix), the provision addressing when a mental illness is considered work-related for recordkeeping purposes. The underlying citation against Exxon Mobil was therefore also vacated as citing Exxon Mobil for failure to record mental illness cases on its OSHA 300 Log went beyond OSHA's authority under the OSH Act.

What the Ruling Means for Employers

The clearest immediate consequence is within the Fifth Circuit. OSHA now lacks authority to require employers to record work-related mental-health conditions in Texas, Mississippi, and Louisiana.

Outside those three states, the decision provides employers with a potential basis for questioning OSHA's authority to enforce the same mental illness recordkeeping requirement. However, the ruling does not automatically invalidate the requirement nationwide.

Employers operating under an OSHA-approved State Plan face an additional layer of uncertainty. State agencies may have greater discretion depending on the authority granted by their own laws, although State Plan recordkeeping regulations use the same language as the federal rule.

The ruling therefore creates a potentially uneven compliance landscape. An employer's obligations may depend not only on the regulatory language but also on its location, the governing statutory framework, and future court decisions interpreting OSHA's authority.

A Broader Shift in Judicial Review

The decision also demonstrates the potential effect of *Loper Bright* on workplace-safety litigation. Courts may no longer simply follow an agency's interpretation of an ambiguous statute or regulation; instead, they must independently determine its "best reading."

For OSHA, that approach could invite closer judicial scrutiny of other requirements whose statutory basis is disputed. For employers, it may create new opportunities to challenge agency interpretations, but also greater uncertainty as different courts address similar questions.

Key Takeaway

Employers in Texas, Mississippi, and Louisiana should account for the Fifth Circuit's ruling when evaluating OSHA recordkeeping obligations involving mental health conditions. Employers elsewhere should recognize that the decision may support similar challenges should an employee present the required documentation to support a work-related mental health condition.

And, beyond the requirement to record work-related mental illnesses on an OSHA 300 Log, it illustrates how courts' independent review of statutory language may reshape the boundaries of OSHA's and other federal agencies' regulatory and enforcement authority.