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The Employers E-Recordkeeping Coalition Submits Comprehensive Written Comments to OSHA's E-Recordkeeping Rulemaking Docket

By Eric J. Conn, Chair of Conn Maciel Carey's national OSHA Practice

On March 30th, OSHA published a new proposed rule to amend and dramatically expand the requirements of its "Improve Tracking of Workplace Injuries and Illnesses Rule" (aka, the E-Recordkeeping Rule). We digested the tortured history of OSHA's E-Recordkeeping Rule, the proposed amendments OSHA introduced this Spring, and the implications of the proposed changes in **this article**.

Conn Maciel Carey's OSHA Team organized a flat fee-based E-Recordkeeping Rulemaking Coalition of employers and trade groups to collaborate to submit public comments on this proposal and otherwise participate in the rulemaking process to advocate for the most manageable possible E-Recordkeeping Rule. The first major step taken by our Employers E-Recordkeeping Coalition was to submit a comprehensive set of written comments to OSHA's rulemaking record on June 30th. Here is **a copy of our as-filed comments**.

To summarize, we addressed in the comments that:

- OSHA will use this electronic data for enforcement targeting, even though the criteria for recording illness and injuries neither assumes nor requires any correlation between the injury and regulatory non-compliance or any employer fault. This is even more important now, because some employers are recording numerous COVID-19 cases even when work-relatedness is uncertain.
- OSHA has no genuine need and cannot make meaningful use of the more detailed data set to be collected, yet it will create an extraordinary burden for employers to submit.
- OSHA is not capable of protecting employees' confidential personal and medical information that will be collected with OSHA 300 Logs and 301 Incident Reports.
- The definition of "high hazard industry" is overly inclusive — covering thousands of small employers in industries with essentially average DART rates.
- Other important issues our coalition members have been identifying in our planning and strategy sessions.

We predict the rule will be finalized and issued by the end of this calendar year or early in 2023 – in time for the next E-Recordkeeping submission deadline next March. In the meantime, OSHA will be considering the written

comments submitted by interested stakeholders and will deliver a proposed final amended rule to OMB. As we have done in the last several OSHA rulemakings, our Employers Coalition will seek to participate in the OMB review process. And we will continue to look for any other opportunities to advocate for the positions we staked out in these written comments, including through informal meetings with the OSHA policy team and more formally through a stakeholder meeting (or several of them) with OMB.

Contact us if your organization may be interested in participate in our Coalition or if you have questions about OSHA's E-Recordkeeping rule.