OSHA Recordkeeping 2017
What's new? What's next?

PMA Safety Conference - October 2017

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The Zurich Services Corporation

Risk Engineering

Intro

New recordkeeping changes

- Final rule became effective 1/1/17
  - 29CFR1904.35
- Includes:
  - Electronic reporting of log data to OSHA
  - Public disclosure of log data
  - Employees' right to report incidents free from retaliation

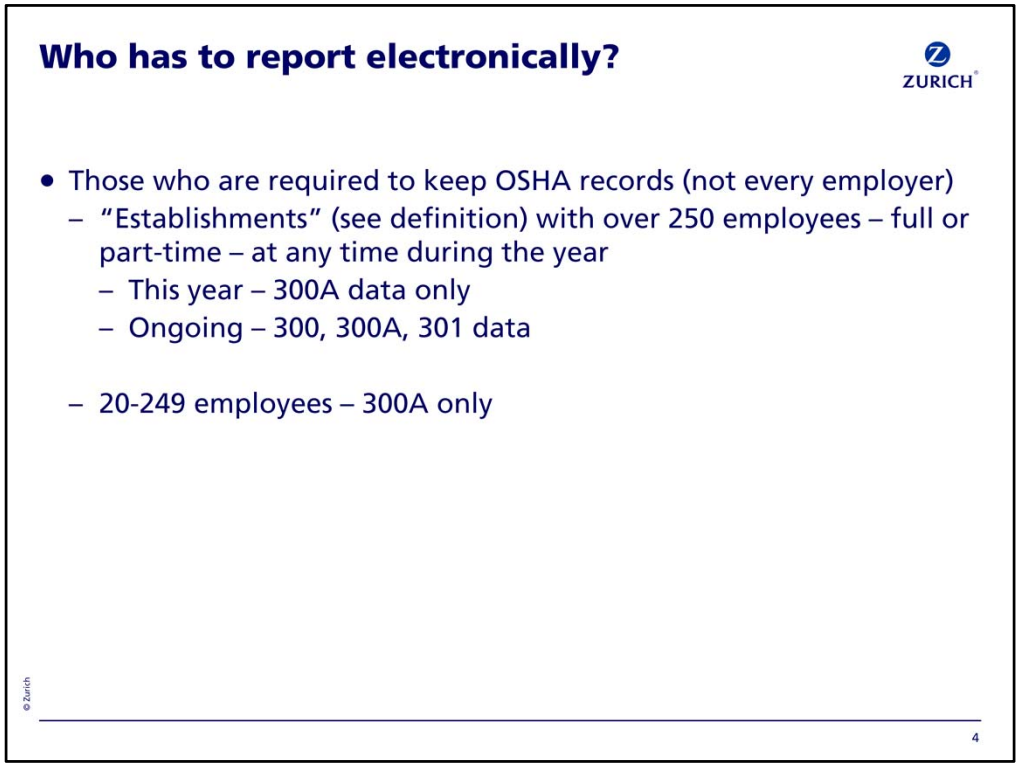
So far not rescinded.
No need to panic – not onerous, just a little extra work for most smaller companies.
Concern – what is to be done with the data.

Electronic data reporting

- 2016 log data must be submitted to OSHA via their reporting system by 12/1/17
  - Originally 7/1/17 but software was not ready
  - Data submission platform became available 8/1/17
- Future deadlines
  - 7/1/18 to submit 2017 data
  - 2019 and forward – 3/2 deadline

The deadline is 12/1/17. It's already been extended once – not likely again.

NOTE – all info refers to 29CFR1904.35 except where noted

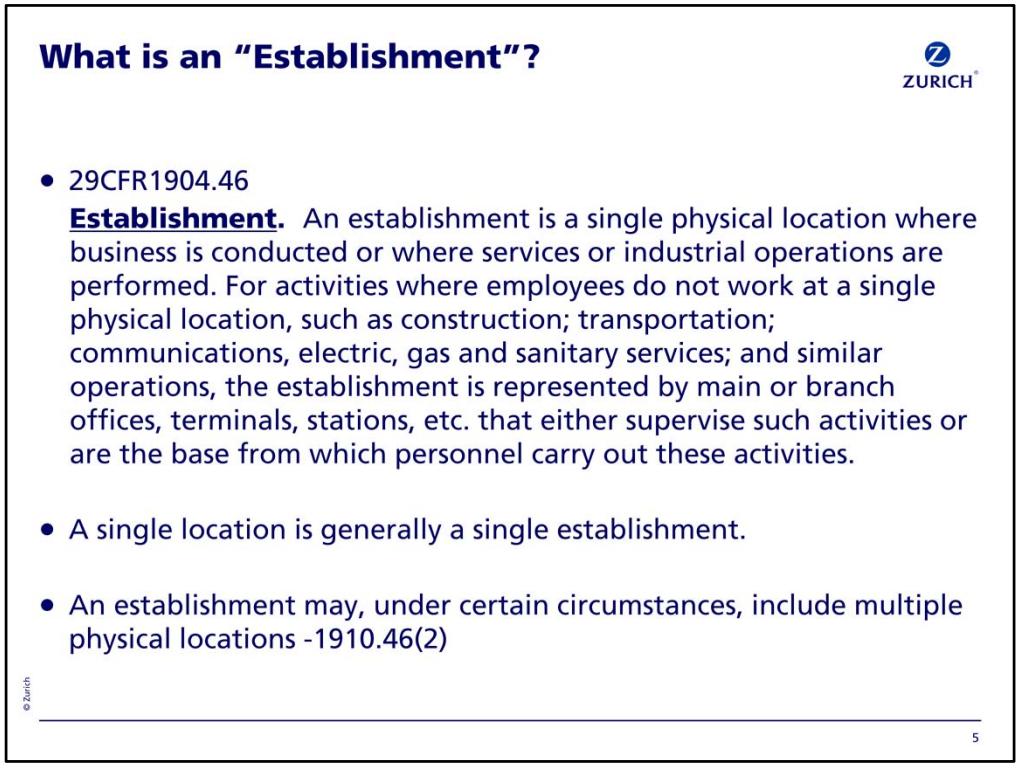


Two classes of employers are partially exempt from routinely keeping injury and illness records. First, employers with ten or fewer employees at all times during the previous calendar year are exempt from routinely keeping OSHA injury and illness records**.**

Second, establishments in certain low-hazard industries are also partially exempt from routinely keeping OSHA injury and illness records. (No Manufacturing NAICS codes – NAICS 31-33 - are on this list.)

Partially exempt employers are not required to keep OSHA injury and illness unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS.

All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any workplace incident that results in a fatality, in-patient hospitalization, amputation, or loss of an eye (see §1904.39).



(Direct from 29CFR1904.46)

Establishment. An establishment is a single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.
1904.46(1)
Can one business location include two or more establishments? Normally, one business location has only one establishment. Under limited conditions, the employer may consider two or more separate businesses that share a single location to be separate establishments. An employer may divide one location into two or more establishments only when:
1904.46(1)(i)
Each of the establishments represents a distinctly separate business;
1904.46(1)(ii)
Each business is engaged in a different economic activity;
1904.46(1)(iii)
No one industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments; and
1904.46(1)(iv)
Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, the employer may consider each business to be a separate establishment.
1904.46(2)
Can an establishment include more than one physical location? Yes, but only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:
1904.46(2)(i)
The employer operates the locations as a single business operation under common management;
1904.46(2)(ii)
The locations are all located in close proximity to each other; and
1904.46(2)(iii)
The employer keeps one set of business records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

How will the data be used?

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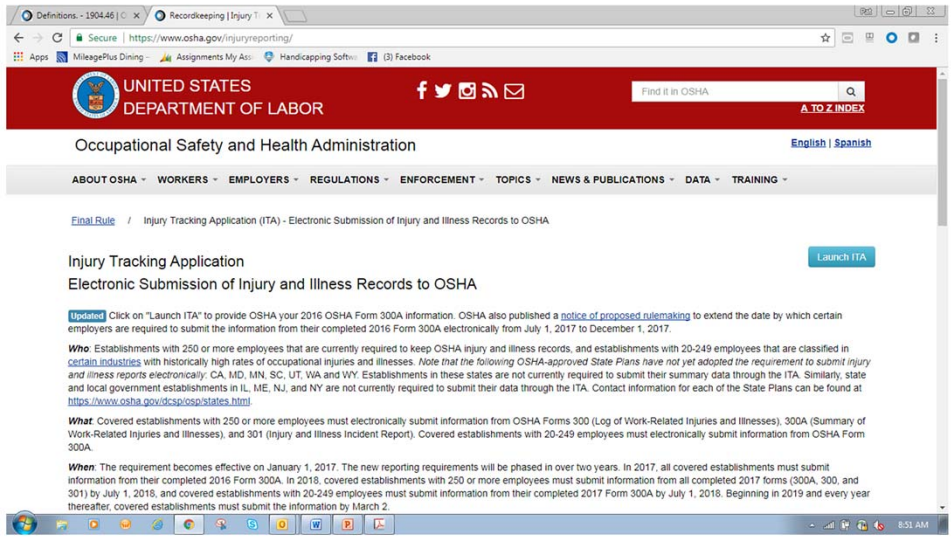
- For research
- For allocating OSHA compliance assistance resources
- For targeting enforcement resources to industries/establishments with high incident rates
- For public disclosure on the OSHA web site
  - *May 11, 2016 press release*: "Just as public disclosure of their kitchens' sanitary conditions encourages restaurant owners to improve food safety, OSHA expects that public disclosure of work injury data will encourage employers to increase their efforts to prevent work-related injuries and illnesses."
  - "Since high injury rates are a sign of poor management, no employer wants to be seen publicly as operating a dangerous workplace," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "Our new reporting requirements will 'nudge' employers to prevent worker injuries and illnesses to demonstrate to investors, job seekers, customers and the public that they operate safe and well-managed facilities."

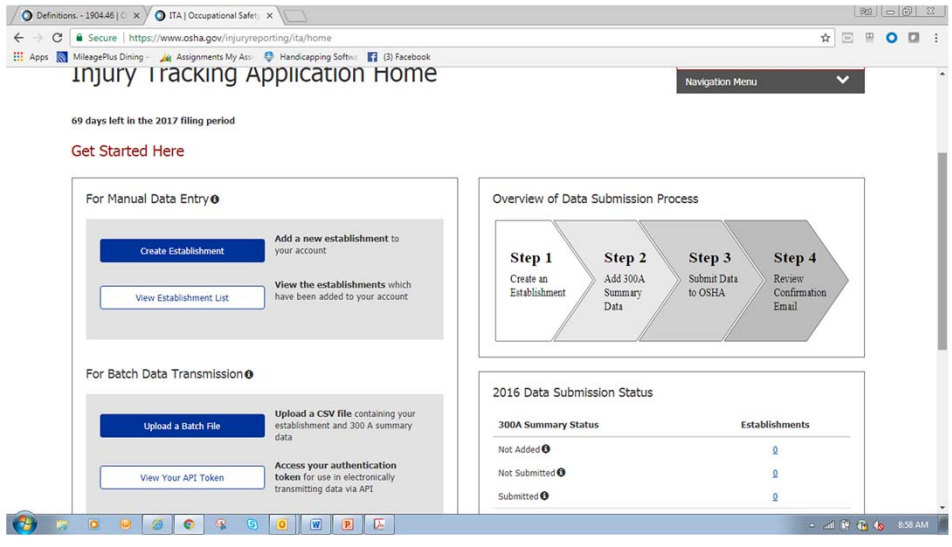
From the OSHA press release 5/11/2016

Reporting



OSHA web site

Injury Tracking Application (ITA)



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You can add data manually or by batch.

Zurich web site – linked to zurichfrol.com (Zurich partner)

Do it now – but do it right…

- It appears that the electronic submission requirement is not going to be rescinded by the Administration
- There has also been no word that the public disclosure will not take place
- It's important that your records be correct
  - Don't under-report, but also don't over-report

There are rumblings that the public disclosure policy may be changed, but no official word yet.

OSHA concerned that employees may be intimidated into not reporting incidents, making the data faulty.

3 requirements (next)

Information

- All employers must inform their employees of their right to report work-related injuries and illnesses free from retaliation.
- OSHA says that posting of the latest *Job Safety and Health — It's The Law* poster – which is already required – satisfies this requirement. (www.osha.gov/Publications/poster.html).
  - Ref. OSHA 3862 guidance document

Ref. OSHA 3862 guidance document

Reasonable reporting procedure

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- The employer's procedure for reporting work-related injuries and illnesses must be reasonable and can't deter or discourage employees from reporting.
  - First, there must BE a procedure
  - **OSHA interpretation memo to Regional Administrators 10/19/16:**
  - ". . . it would be reasonable to require employees to report a work-related injury or illness as soon as practicable after realizing they have the kind of injury or illness they are required to report to the employer, such as the same or next business day when possible. However, it would not be reasonable to discipline employees for failing to report before they realize they have a work-related injury they are required to report or for failing to report "immediately" when they are incapacitated because of the injury or illness. A rigid prompt-reporting requirement that results in employee discipline for late reporting even when the employee could not reasonably have reported the injury or illness earlier would violate section 1904.35(b)(1)(iv)."
  - "It would also be reasonable to require employees to report to a supervisor through reasonable means, such as by phone, email, or in person. However, it would not be reasonable to require ill or injured employees to report in person if they are unable to do so. Likewise, it would not be reasonable to require employees to take unnecessarily cumbersome steps or an excessive number of steps to report."

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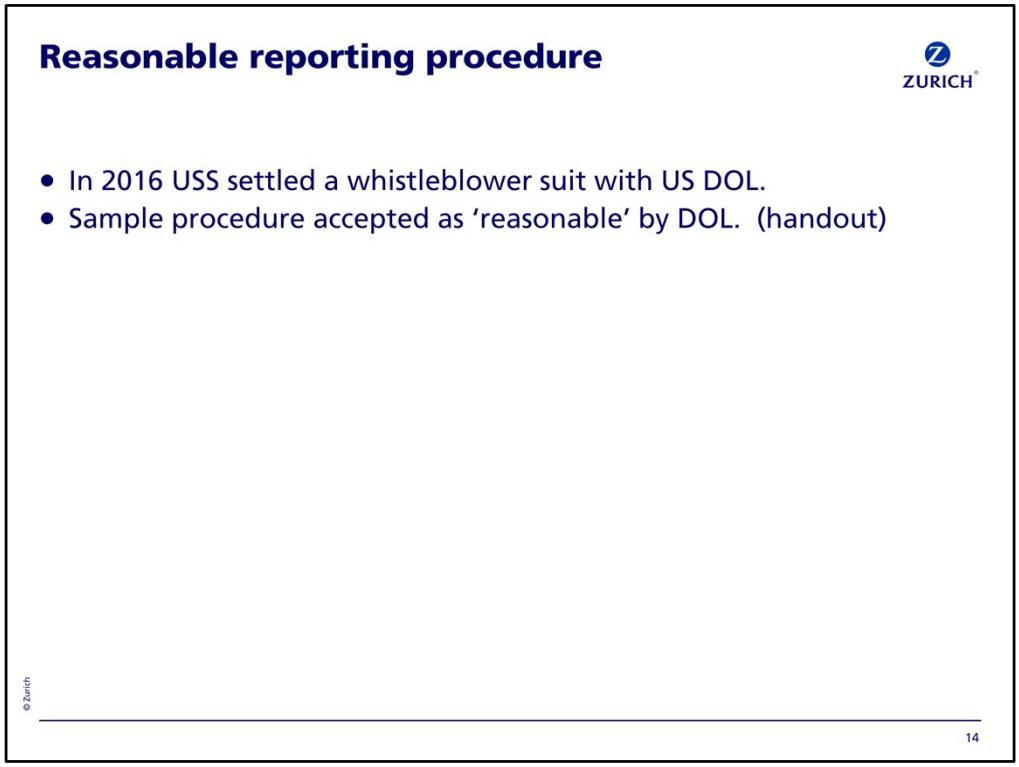
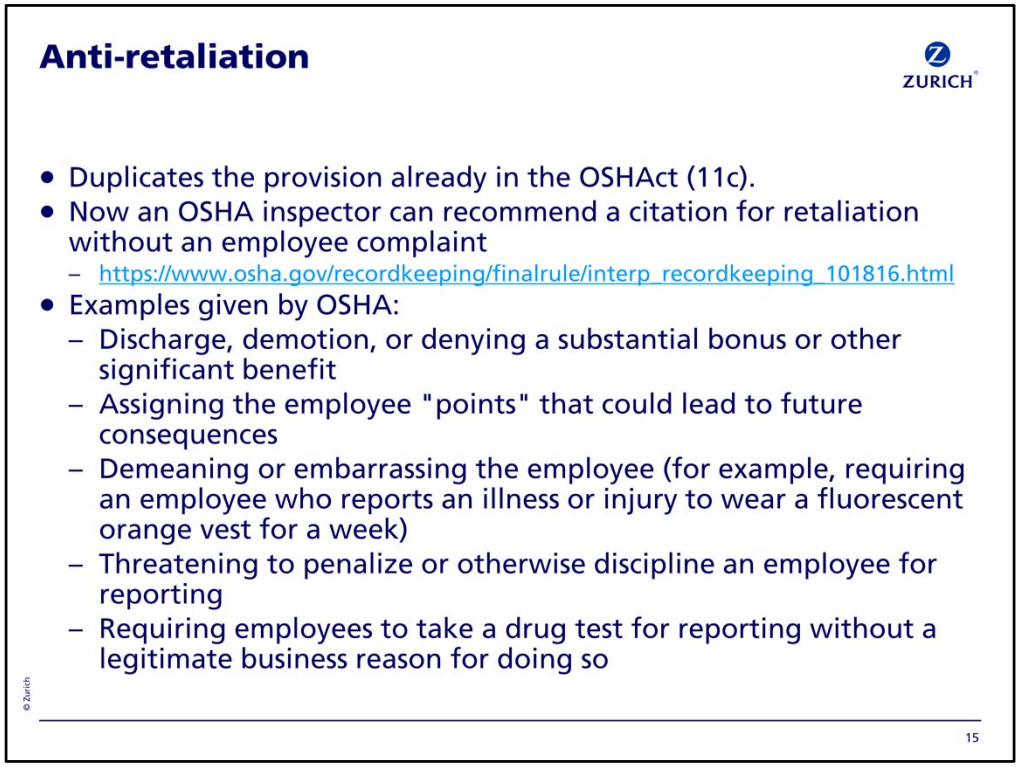
Ref. OSHA 3862 guidance document and 10/19/16 memo from DOROTHY DOUGHERTY, Deputy Assistant Secretary

DOL whistleblower settlement with USS - 2016

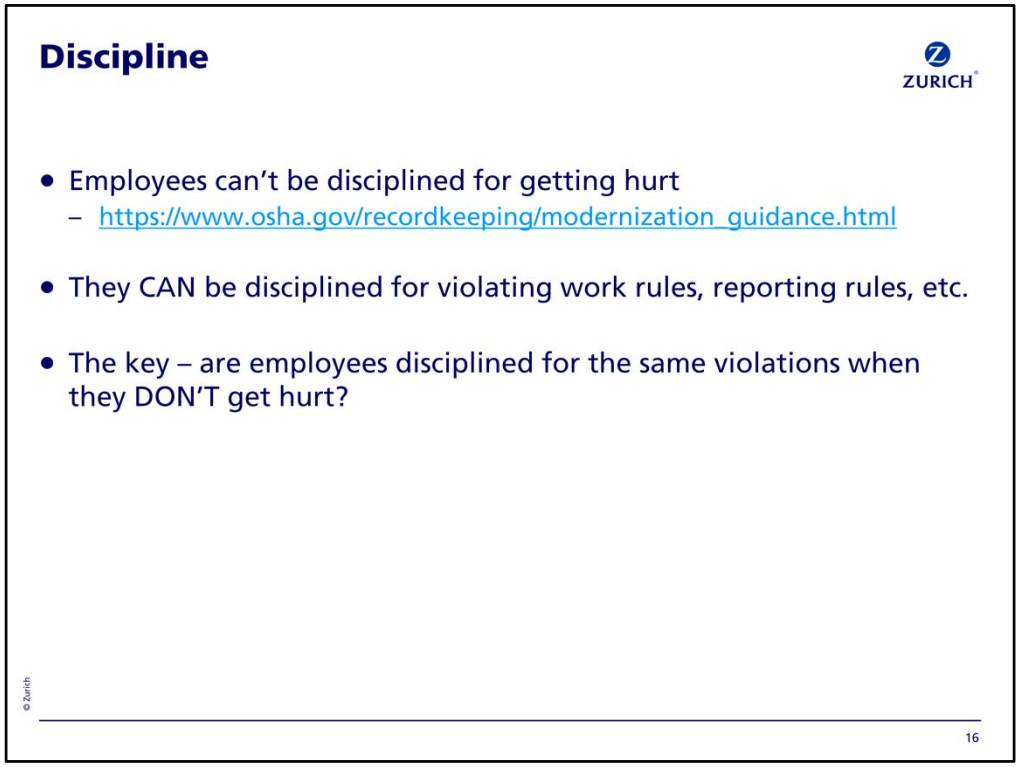


One USS employee removed a splinter and didn't report it until some time later when it started to throb.
A second USS employee hit his head on a beam and didn't report it until some time later when he developed pain.
Both got paid for the time they were suspended for violating the 'Immediate Reporting' policy.
USS and USW agreed to a new policy for injuries/illnesses and another for near misses.



This is one of the subjects of the lawsuit against OSHA.

Ref. https://www.osha.gov/recordkeeping/modernization_guidance.html



Examples from OSHA:

Scenario 1: Employee X is injured when he is stung by a bee at work, and he reports the injury to Employer. Employer disciplines Employee X for violating a work rule requiring employees to "maintain situational awareness." Employer only enforces the rule when employees get hurt.
Question: Did Employer violate 1904.35(b)(1)(iv) by disciplining Employee X for reporting a bee sting injury?
Answer: *Yes*. This is an example of a pretextual disciplinary action, which is prohibited. In this case, although Employer ostensibly disciplined Employee X for violating a work rule, Employer only enforced the work rule after a work-related injury or illness report, which indicates that the real reason for the discipline was the reported injury, not the rule violation. Such vague work rules are particularly susceptible to being enforced disproportionately against employees who report work-related injuries or illnesses because they do not require or proscribe specific conduct.

Scenario 2: Employee X reports a hand injury that she sustained while operating a saw after bypassing the guard on the saw, contrary to the employer's work rule. Employee X's hand injury required her to miss work for two days. Employer disciplined Employee X for bypassing the guard contrary to its instructions. Employer regularly monitors its workforce for safety rule violations and disciplines employees who bypass machine guards regardless of whether they report injuries.

Question: Did Employer violate 1904.35(b)(1)(iv) when it disciplined Employee X?
Answer: *No*. Section 1904.35(b)(1)(iv) does not prohibit employers from disciplining employees who violate legitimate workplace safety rules as long as the rules are not used as a pretext for retaliating against employees who report work-related injuries or illnesses. On the contrary, OSHA encourages employers to implement workplace safety rules, train employees on those rules, and take consistent, appropriate action when employees violate them regardless of whether the employees violating the rules reported injuries.

Scenario 3: Employee X twists his ankle at work but does not immediately realize that he is injured because his ankle is not sore or swollen, and therefore he does not report the injury to Employer. The next morning, Employee X's ankle is sore and swollen, and he realizes he has the kind of injury he is required to report to Employer. He reports the injury to the employer that day. Employer disciplines Employee X for failing to report his injury "immediately" as required by Employer's X's injury reporting rules.
Question: Did Employer violate 1904.35(b)(1)(iv) by disciplining Employee X for failing to report his injury immediately even though Employee X did not immediately realize he was injured?
Answer: *Yes*. Employer's rigid prompt reporting requirement would violate section 1904.35(b)(1)(i) because it fails to account for injuries that build up over time. In addition, taking adverse action against an employee under such a policy as described in this example would also constitute a pretextual disciplinary action, which is prohibited under section 1904.35(b)(1)(iv). In this case, although Employer ostensibly took the adverse action because Employee X violated a work rule, the work rule was not reasonable and therefore does not constitute a legitimate business reason for taking adverse action against an employee who reports a work-related injury or illness. Although employers may require employees to report as soon as practicable after realizing they have a work-related injury or illness, it is not practicable for an employee to report an injury that has not yet manifested.

Scenario 4: Employee X twists her ankle at work but does not immediately realize that she is injured because her ankle is not painful or swollen, and therefore she does not report the injury to Employer. The next morning, Employee X's ankle is painful and swollen and she realizes it is the kind of injury she is required to report to Employer as soon as practicable. However, Employee X does not report the injury after this realization, although she easily could have, and instead reports it several weeks later. Employer disciplines Employee X for failing to report her injury as soon as practicable after realizing she has the kind of injury she is required to report.
Question: Did Employer violate 1904.35(b)(1)(iv) by disciplining Employee X for failing to report a work-related injury or illness as soon as practicable after realizing she had a work-related injury?
Answer: *No*. OSHA recognizes that employers have a legitimate business interest in learning about employee injuries close in time to when they occur or become

manifest. Employers may require employees to report work-related injuries or illnesses as soon as practicable after they realize they have a work-related injury serious enough to report. Note: a reporting procedure that requires employees to report as soon as practicable after they realize they have the kind of injury or illness they are required to report is reasonable and therefore would also not violate section 1904.35(b)(1)(i).

Incentives

- Withholding an incentive (bonus, pizza party, etc.) from an employee or group due to incident reporting is not acceptable.
- Incentive programs are encouraged by OSHA if they reward positive activities
- Examples from OSHA:
  - Worker participation in safety program activities and evaluations;
  - Worker completion of safety and health training;
  - Reporting and responding to hazards and close calls/near misses;
  - Safety walkthroughs and identification of hazards during safety walkthroughs/inspections;
  - Conformance to planned preventive maintenance schedules;
  - Compliance with legitimate workplace safety rules.
- https://www.osha.gov/recordkeeping/modernization_guidance.html

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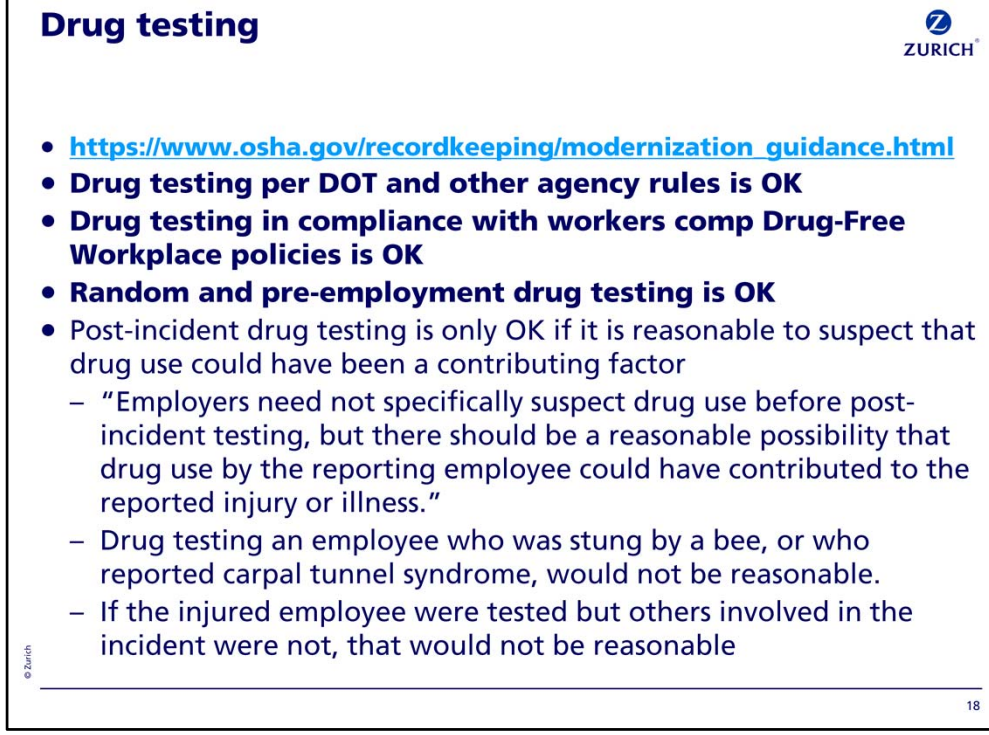
https://www.osha.gov/recordkeeping/modernization_guidance.html

Drug testing



https://www.osha.gov/recordkeeping/modernization_guidance.html

Conclusion

- The new Rule makes some changes, but need not cause panic.
- Some provisions may still be rescinded or found invalid by the courts, but for now compliance is mandatory.

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Thank you

pat.mccon@zurichna.com

Risk Engineering
zurichna.com

OSHA® FactSheet

Final Rule to Improve Tracking of Workplace Injuries and Illnesses

Each year, millions of workers suffer serious injuries and illnesses on the job. Under the Federal *Occupational Safety and Health Act*, employers must provide their workers with worksites free of recognized serious hazards. In order to help prevent work-related injuries and illnesses, the Occupational Safety and Health Administration (OSHA) has for decades required employers to keep track of their workers' injuries and illnesses by recording them in what is often called an "OSHA log."

Under a final rule that becomes effective January 1, 2017, OSHA will revise its requirements for recording and submitting records of workplace injuries and illnesses to require that some of this recorded information be submitted to OSHA electronically for posting to the OSHA website.

We are taking information that employers are already required to collect and using these data to help keep workers safer and make employers, the public, and the government better informed about workplace hazards. Releasing the data in standard, open formats will:

- Encourage employers to increase their efforts to prevent worker injuries and illnesses, and, compelled by their competitive spirit, to race to the top in terms of worker safety; and
- Enable researchers to examine these data in innovative ways that may help employers make their workplaces safer and healthier and may also help to identify new workplace safety hazards before they become widespread.

In addition, the final rule includes provisions that encourage workers to report work-related injuries or illnesses to their employers and prohibit employers from retaliating against workers for making those reports.

OSHA expects this new rule will help improve workplace safety through expanded access to timely, establishment-specific injury and illness information for OSHA, employers, employees, employee representatives, potential employees, customers, potential customers, and public health researchers.

The rule will also provide OSHA with data to assist the agency in improving allocation of compliance assistance — help OSHA provide to employers who want to improve their safety standards — and enforcement resources, expanding the Agency's ability to identify, target and remove safety and health hazards, thereby preventing workplace injuries, illnesses and deaths. It will also enable OSHA to conduct more rigorous evaluations of the impact of government injury prevention activities.

In addition, behavioral science suggests that public disclosure of the data will "nudge" employers to reduce work-related injuries and illnesses in order to demonstrate to investors, job seekers, customers, and the broader public that their workplaces provide safe and healthy work environments for their employees. Currently, employers cannot compare their injury experience with other businesses in their industry; they can only compare their experience with their industry as a whole. Access to establishment-specific data will enable employers to benchmark their safety and health performance against industry leaders, encouraging them to improve their safety programs.

Finally, public access to very large sets of workplace injury and illness data will provide public health researchers with unprecedented opportunities to advance the fields of injury and illness causation and prevention research.

Background

In 2013, OSHA issued a proposed rule to improve tracking of workplace injuries and illnesses through the electronic collection of establishment-specific injury and illness data

to which OSHA currently does not have direct access. The agency held a public meeting in January 2014 and received comments on the proposal. After considering public comments, OSHA is now issuing a final rule that requires certain employers to electronically submit injury and illness data.

Electronic Submission Requirements

The final rule requires certain employers to electronically submit the injury and illness information they are already required to keep under existing OSHA regulations.

The requirement applies to the following:

- Establishments with 250 or more employees that are currently required to keep OSHA injury and illness records must electronically submit information from OSHA Forms 300 — *Log of Work-Related Injuries and Illnesses*, 300A — *Summary of Work-Related Injuries and Illnesses*, and 301 — *Injury and Illness Incident Report*.
- Establishments with 20-249 employees that are classified in certain industries with historically high rates of occupational injuries and illnesses must electronically submit information from OSHA Form 300A.

The electronic submission requirements do not change an employer's obligation to complete and retain injury and illness records.

Data submission from OSHA Forms 300 — *Log of Work-Related Injuries and Illnesses*, 300A — *Summary of Work-Related Injuries and Illnesses*, and 301 — *Injury and Illness Incident Report* for these establishments will be phased in as follows:

Submission year	Establishments with 250 or more employees	Establishments with 20-249 employees	Submission deadline
2017	Form 300A	Form 300A	July 1, 2017
2018	Forms 300A, 300, 301	Form 300A	July 1, 2018

Beginning in 2019, the submission deadline will be changed from July 1st to March 2nd. Timeliness of the data collected is important for surveillance and intervention activities. The earlier a workplace hazard can be identified, the earlier it can be removed, reducing the chances of another worker being injured or becoming ill.

OSHA will post the establishment-specific injury and illness data it collects under this recordkeeping rule on its public Web site (www.osha.gov). OSHA will remove any Personally Identifiable Information (PII) before the data are released to the public.

The final rule retains the provision that allows OSHA to collect information from employers that do not submit the information to the Agency on a routine basis. These employers would only be required to submit the data requested upon written notification from OSHA or OSHA's designee.

States that operate their own job safety and health programs, also called OSHA State Plan states, must adopt requirements that are substantially identical to the requirements in this rule within six months after publication of the final rule.

Employees' Right to Report Free from Retaliation

These data will only be accurate if employees feel free to report injuries and illnesses without fear of retaliation. The rule therefore also contains three provisions to promote complete and accurate reporting of work-related injuries and illnesses.

- Employers must inform employees of their right to report work-related injuries and illnesses free from retaliation. This obligation may be met by posting the OSHA *Job Safety and Health — It's The Law* worker rights poster from April 2015 or later (www.osha.gov/Publications/poster.html).
- An employer's procedure for reporting work-related injuries and illnesses must be reasonable and must not deter or discourage employees from reporting.
- An employer may not retaliate against employees for reporting work-related injuries or illnesses.

Workers' Rights

Workers have the right to:

- Working conditions that do not pose a risk of serious harm.
- Receive information and training (in a language and vocabulary the worker understands) about workplace hazards, methods to prevent them, and the OSHA standards that apply to their workplace.
- Review records of work-related injuries and illnesses.
- File a complaint asking OSHA to inspect their workplace if they believe there is a serious hazard or that their employer is not following OSHA's rules. OSHA will keep all identities confidential.
- Exercise their rights under the law without retaliation, including reporting an injury or raising health and safety concerns with their employer or OSHA. If a worker has been retaliated against for using their rights, they must file a complaint with OSHA as soon as possible, but no later than 30 days.

For more information, see OSHA's Workers page.

How to Contact OSHA

For questions or to get information or advice, to report an emergency, fatality, inpatient hospitalization, amputation, or loss of an eye, or to file a confidential complaint, contact your nearest OSHA office, visit www.osha.gov or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For assistance, contact us. We can help. It's confidential.

OSHA® Occupational Safety and Health Administration

www.osha.gov (800) 321-OSHA (6742)

U.S. Department of Labor

DSG FS-3862 05/2016

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS E. PEREZ, UNITED STATES SECRETARY OF LABOR,	)	
Plaintiff,	)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION,	)	
Intervenor,	)	
v.	)	**CIVIL NO. 1:16-92-RGA**
UNITED STATES STEEL CORPORATION,	)	
Defendant.	)	

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of the date the last Party signs the Agreement (the "Effective Date") by and between the United States Secretary of Labor ("Secretary") and the United States Steel Corporation ("US Steel"), an entity organized under the laws of Delaware, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, AFL-CIO, CLC (the "Union"). The Secretary, US Steel, and the Union are referred to individually as a "Party" and collectively as the "Parties" to this Agreement.

RECITALS

1. Before the Effective Date of this Agreement, US Steel published and enforced a general safety and plant conduct rule requiring all employees to report immediately all injuries to a supervisor (the "Immediate Reporting Policy").

2. On February 17, 2016, the Secretary filed a complaint (the "Complaint") in the United States District Court for the District of Delaware under Section 11(c) of the Occupational Safety

and Health Act (the "Act"), 29 U.S.C. § 660(c), against US Steel (the "Civil Action").

3. The Secretary alleged in the Complaint that US Steel's Immediate Reporting Policy discourages reasonable employees from reporting injuries as soon as they realize they have been injured because they risk violating US Steel's temporally stringent requirement under the Immediate Reporting Policy. The Secretary also alleged that US Steel's Immediate Reporting Policy violates the implementing regulations under the Act that establish a recordkeeping system for recording workplace injuries and illnesses by creating a barrier for reasonable employees to report workplace injuries and illnesses.

4. The Secretary further alleged in the Complaint that US Steel's stringent temporal reporting requirement under its Immediate Reporting Policy made it impossible or impracticable in many instances for employees to comply with the Immediate Reporting Policy because there are necessarily many situations where an employee will be unaware at the time of an incident that he or she sustained an injury, especially where the nature of the work at issue involves physically strenuous activity.

5. The Secretary further alleged in the Complaint that US Steel disciplined employees Jeff Walters, John Armstrong, and other employees under the Immediate Reporting Policy for reporting workplace injuries when the employees become aware that they sustained workplace injuries after the "event" or "incident" causing the later-known injury.

6. US Steel denies all allegations with respect to the Immediate Reporting Policy or any disciplines related thereto, whether made in the Complaint or elsewhere, denies that the Immediate Reporting Policy violated the Act or is otherwise contrary to law or regulation, and denies that it has otherwise violated the Act or any laws or regulations in any respect.

7. On June 6, 2016, the Court granted the Union's motion to intervene, limited to the remedies aspect of this Civil Action.

8. The Parties have determined that it is in their best interest, and to avoid additional or further expenses associated with litigation, to settle the allegations, claims, and causes of action set forth in the Complaint.

NOW, THEREFORE, in consideration of the mutual agreements and promises entered into between the Parties and intending to be legally bound, the Parties agree as follows:

TERMS OF AGREEMENT

A. US Steel's Agreements. (i) As of the Effective Date of this Agreement, US Steel agrees to and will rescind the discipline of John Armstrong that is the subject of the Complaint. Within thirty (30) calendar days of the Effective Date of this Agreement, US Steel will pay John

Armstrong $877.23 in back wages, which includes interest, lost in connection with the discipline that is the subject of the Complaint. This payment will be subject to applicable and other usual and customary payroll deductions, including but not limited to union dues.

(ii) As of the Effective Date of this Agreement, US Steel agrees to and will rescind the discipline of Jeff Walters that is the subject of the Complaint. Within thirty (30) calendar days of the Effective Date of this Agreement, US Steel will pay Jeff Walters $471.84 in back wages, which includes interest, lost in connection with the discipline that is the subject of the Complaint. This payment will be subject to applicable and other usual and customary payroll deductions, including but not limited to union dues.

(iii) As of the Effective Date of this Agreement, US Steel agrees to and will rescind the discipline of Derrick Marbley, an employee at US Steel's Lorain Tubular facility, in connection with the complaint that Derrick Marbley filed with the Occupational Safety and Health Administration ("OSHA") under Section 11(c) of the Act, 29 U.S.C. § 660(c), which complaint is still pending review by OSHA, identified as complaint number 5-8120-14-026. Specifically, US Steel agrees to and will rescind the disciplinary suspension issued to Marbley on February 28, 2014, and agrees to and will rescind the disciplinary suspension issued to Marbley on June 30, 2014, and agrees to and will issue in its place a written warning, contingent on Marbley withdrawing any grievances filed with respect to the aforementioned disciplinary suspensions.

(iv) As of the Effective Date of this Agreement, US Steel agrees immediately to rescind the Immediate Reporting Policy. After the Effective Date of this Agreement, US Steel agrees never to reinstate or enforce the Immediate Reporting Policy or any injury or incident reporting policy containing a temporally restrictive reporting requirement that makes it impossible or impracticable for an employee to comply when he or she is unaware at the time of an incident that he or she sustained an injury or illness.

(v) As of the Effective Date of this Agreement, US Steel, with the concurrence of the Union, agrees immediately to adopt, publish, and implement at all locations and worksites operated or controlled by US Steel or any of its subsidiaries the Occupational Illness and Injury Reporting Policy, the full and complete text of which is attached hereto as Exhibit A. As of the Effective Date of this Agreement, US Steel agrees that the Occupational Illness and Injury Reporting Policy, attached hereto as Exhibit A, will immediately replace and supersede the Immediate Reporting Policy in effect prior to the Effective Date of this Agreement. As of the Effective Date of this Agreement, US Steel agrees that the Occupational Illness and Injury Reporting Policy, attached hereto as Exhibit A, immediately replaces and supersedes any other or additional injury or illness reporting rule or policy, whether published or not, that US Steel has imposed, enforced, or implemented in any way or manner.

(vi) As of the Effective Date of this Agreement, US Steel, with the concurrence of the Union, agrees immediately to adopt, publish, and implement at all locations and worksites

operated or controlled by US Steel or any of its subsidiaries the Incident Without Injury Reporting Policy, the full and complete text of which is attached hereto as Exhibit B. As of the Effective Date of this Agreement, US Steel agrees that the Incident Without Injury Reporting Policy, attached hereto as Exhibit B, immediately replaces and supersedes any other or additional incident reporting rule or policy, whether published or not, that US Steel has imposed, enforced, or implemented in any way or manner.

(vii) Within seven (7) calendar days of the Effective Date of this Agreement, US Steel agrees to post prominently for sixty (60) calendar days the Occupational Illness and Injury Reporting Policy, attached hereto as Exhibit A, and the Incident Without Injury Reporting Policy, attached hereto as Exhibit B, at all locations and worksites operated or controlled by US Steel or any of its subsidiaries.

B. The Secretary's Agreement. In exchange for US Steel's agreements and promises, as stated in Paragraph A above, within seven (7) calendar days after the Secretary's representative receives this Agreement signed by all Parties to this Agreement, the Secretary agrees voluntarily to withdraw with prejudice the Complaint under Federal Rule of Civil Procedure 41(a). In addition, the complaint filed by Derrick Marbley with OSHA under Section 11(c) of the Act (Complaint No.: 5-8120-14-026) will be immediately dismissed by OSHA on the Effective Date of this Agreement.

C. Statute Law and Regulation Control. The Parties agree that the Department of Labor will not prosecute or pursue any administrative enforcement action or civil action under the Act in connection with US Steel's adoption and implementation under this Agreement of the Occupational Illness and Injury Reporting Policy, attached hereto as Exhibit A, and the Incident Without Injury Reporting Policy, attached hereto as Exhibit B, provided US Steel complies with the terms of this Agreement. US Steel agrees that it shall not change, revise, interpret, implement, or otherwise give effect to the Occupational Illness and Injury Reporting Policy, attached hereto as Exhibit A, and the Incident Without Injury Reporting Policy, attached hereto as Exhibit B, in any way or manner that violates or contravenes the Act or any standard or rule published by OSHA under the Act. Any disputes relating to or arising out of the application of the Occupational Illness and Injury Reporting Policy, attached hereto as Exhibit A, or the Incident without Injury Reporting Policy, attached hereto as Exhibit B, shall be subject to the dispute resolution procedures (Adjustment of Grievances) of the applicable Basic Labor Agreement between the US Steel and the Union; provided, however, that the foregoing clause is not intended to prevent or interfere with any person's right to engage in any future activities protected under the Act. Notwithstanding any other provision in this Agreement, the Secretary may enforce the terms or conditions of this Agreement at any time by bringing a civil action, as provided in Paragraph H.

D. No Admission of Fault. This Agreement is entered into by the Parties for the sole purpose of settling any and all disputes relating to or arising from this Civil Action. No Party to

this Agreement admits fault or liability in connection with the allegations or claims in the Complaint. This Agreement shall not be construed or interpreted as a confession of guilt or liability by any Party.

E. Successors. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors, and assigns.

F. Integrated Agreement. The Parties intend this Agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, this Agreement is the sole repository of the Parties' agreement and they are not bound by any other agreements, promises, statements, representations, or writings of any kind or nature. The Parties also intend that this complete, exclusive, and fully integrated statement of the Parties' agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing.

G. Attorney's Fees and Costs. The Parties agree to bear their own attorney's fees, costs, and other expenses incurred by each Party in connection with any part or stage of this Civil Action, including, but not limited to, any attorney's fees and costs that may be available under the Equal Access to Justice Act, as amended.

H. Governing Law and Venue. Any and all matters of dispute between the Parties to this Agreement, whether arising from the Agreement itself or arising from any alleged extra-contractual facts prior to, during, or subsequent to the Agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort or violation of the Agreement, shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, regardless of the legal theory upon which such matter or matters are asserted, except that this Agreement shall not be interpreted in any way to conflict with the Act or any standard or rule published by OSHA under the Act. Any action to enforce this Agreement shall be brought only in the United States District Court for the District of Delaware.

I. Exhibits. Exhibit A contains the full and complete text of the Occupational Illness and Injury Reporting Policy, and Exhibit B contains the full and complete text of the Incident Without Injury Reporting Policy, both of which are incorporated into and made a part of this Agreement.

J. Headings. Any headings or titles preceding any of the sections or provisions of this Agreement are inserted solely for the convenience of reference, shall not constitute a part of this Agreement, and shall not otherwise affect the meanings, content, effect, or construction of this Agreement.

K. Counterparts. This Agreement may be signed in multiple counterparts and transmitted by facsimile or by electronic mail or by any other electronic means intended to preserve the original graphic and pictorial appearance of a Party's signature, each of which shall

be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

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15 July 2016
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Attorneys for Plaintiff

15 July 2016
Date

[Signatures for Union-Intervenor Appear on Following Page]

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7/15/16
Date

Exhibit A to Settlement Agreement

Civil No. 1:16-92-RGA

OCCUPATIONAL ILLNESS AND INJURY REPORTING POLICY

The Company and the USW agree that it is important that all workplace injuries and illnesses are reported to management as soon as reasonably possible after they occur. Prompt reporting allows for prompt identification and correction of hazards and prompt medical attention for injuries. In some instances an employee may not immediately realize that s/he has been injured or made ill. In such circumstances, the employee must report the injury or illness as soon as reasonably possible after becoming aware of the injury or illness.

Therefore, the following policy applies to work-related injury and illness reporting:

1) An employee who is at work when s/he becomes aware of an injury or illness must report it as soon as reasonably possible, but in no event later than leaving the plant or 8 hours after becoming aware of the injury or illness, whichever is earlier. The report must be made to the employee's supervisor, or, if prompt medical attention is needed, to Emergency Services.

2) An employee who is not at work when s/he becomes aware of an injury or illness must report it as soon as reasonably possible, but in no event later than 8 hours after becoming aware of the injury or illness. The employee must report the injury or illness by calling his/her supervisor or the applicable "Call Off" telephone number explaining that s/he is reporting a work-related injury or illness.

3) No employee who complies with this policy will be disciplined for not promptly reporting an injury or illness.

Supervisors must not interfere with, or attempt to discourage, reporting under this policy.

Exhibit B to Settlement Agreement
Civil No. 1:16-92-RGA

INCIDENT WITHOUT INJURY REPORTING POLICY

The Company and the USW agree that it is important that workplace incidents that do not involve injury or illness, as defined in this policy, are reported to management as soon as reasonably possible after they occur. Prompt reporting of such workplace incidents, as provided in this policy, allows for prompt identification and correction of hazards.

The following policy applies to workplace incidents:

Workplace Incident without Injury Defined

A Workplace Incident without Injury is defined as "an unexpected and undesirable workplace event that results in damage to equipment or facilities or which could have resulted in injury, illness or death." A Workplace Incident without Injury does not include any incident involving a workplace injury or illness.

This policy does not apply to the reporting of workplace injuries or illnesses. The requirements for reporting workplace injuries and illnesses are exclusively governed by the Occupational Illness And Injury Reporting Policy.

Reporting Requirement

Employees are required to report all Workplace Incidents without Injury in which they are involved, which they observe, or which they are aware of. Such Workplace Incidents without Injury must be reported as soon as reasonably possible, but in no event later than leaving the plant.

Reports must be made to the employee's supervisor, or, if prompt emergency response is needed, to Emergency Services.

No Retaliation

No employee who makes a good-faith effort to comply with this policy will be disciplined for not promptly reporting a Workplace Incident without Injury.

No employee will be disciplined under this policy for not reporting a Workplace Incident Without Injury if another employee has reported the same Workplace Incident Without Injury.

Supervisors must not interfere with, or attempt to discourage, reporting under this policy.