BUGBEE & CONKLE

THE EMPLOYER

BUGBEE & CONKLE | v7 | DECEMBER 2014

OSHA'S EXPANDED REPORTING & RECORDKEEPING RULE

On January 1, 2015, approximately 3 weeks from now, OSHA's revised recordkeeping and reporting rule becomes effective. The revision expands the list of severe work-related injuries that covered employers must report to OSHA. The revised rule retains the current requirement to report all work-related fatalities within 8 hours, but adds the additional requirement to report all work-related inpatient hospitalizations, amputations, and loss of an eye within 24 hours to OSHA. An inpatient hospitalization is defined as "a formal admission to the inpatient service of a hospital or clinic for care or treatment". Therefore, hospital visits for nothing more than observation or diagnostic testing are not reportable. An amputation is defined as "the traumatic loss of a limb or other external body part," including fingertip amputations with or without bone loss. Only fatalities occurring within 30 days of the work-related incident must be reported to OSHA. An inpatient hospitalization, an amputation, or the loss of an eye must be reported to OSHA only if they occur within 24 hours of the work-related incident. Employers can report to OSHA by calling 1-800-321-OSHA (6742), or calling the closest OSHA area office during normal business hours.

Also, the new rule has expanded the list of industries that are required to keep records of occupational injuries and illnesses. The new list of industries which are exempt from this duty is now based on the North American Industry Classification System (NAICS) as well as injury and illness data from the Bureau of Labor Statistics from 2007 through 2009. The previous list of exempt industries was based on the Standard Industrial Classification (SIC) as well as injury and illness data from the Bureau of Labor Statistics from 1996 through 1998. The new rule, however, retains the exemption for any establishment, regardless of its industry classification, with 10 or fewer employees at all times during the previously calendar year.

Bugbee & Conkle would like to wish all of you a very happy holiday season

For more detailed information regarding the new reporting and recordkeeping requirements as well as updating industry lists, visit OSHA's webpage on the updated recording rule and OSHA's overview fact sheet.

The expansion by OSHA of these reporting and recordkeeping requirements is expected to lead to more OSHA inspections and citations. It is expected that OSHA will use the increased data collected under this rule to target specific industries and establishments for on-site inspections and investigations. Therefore, in advance of January 1, 2015, employers should review safety and injury programs to insure they are prepared to comply with OSHA's new reporting and recordkeeping requirements. For more information on the new reporting and recordkeeping requirements, contact members of our Labor & Employment Section.

SUPREME COURT SET TO RULE ON PREGNANCY DISCRIMINATION ACT

We have previously reported on the EEOC's enhanced interpretation of Pregnancy Discrimination Act of 1978. Now, the U.S. Supreme Court is set to rule on a case that could further expand pregnant workers' rights.

In *Young v. United Parcel Service*, the issue before the Supreme Court is whether, and under what circumstances, an employer is required to offer light duty work to pregnant employees when an employer offers similar accommodations to non-pregnant employees who are "similar in their ability or inability to work." In this case, Peggy Young was a delivery driver for UPS, an essential function of which required her to routinely lift packages of up to 70 pounds. When she became pregnant, and upon the recommendation of her doctor, Young requested a light duty assignment that require she not lift more than 20 pounds. At the time of the request, UPS only provided temporary reassignments, including light duty positions, to people injured on the job; when necessary as a reasonable accommodation under the ADA; and under the terms of their union contract, which provided for light duty to pregnant employees when required by state or federal law. Because none of these restrictions applied, UPS denied her request.

Federal law requires pregnant employees be treated comparable to other employees, but the main question to be answered by the Supreme Court is: Comparable to whom? Commentators have noted that in its most expansive interpretation, the Pregnancy Discrimination Act could be read to require that any accommodation offered to any employee, even if generally reserved for employees injured on the job, also must be offered to pregnant employees who request accommodation. At the other end of the spectrum, a conservative reading of the Act could merely require an employer's policy on accommodations to be neutral, and not discriminatory, toward pregnant employees. The lower courts that have looked at this issue, have sided with UPS and endorsed a more conservative read of the statute.

The Supreme Court heard oral arguments in this case on December 3rd, and a decision is anticipated in the next few months. We will keep you updated as to that decision and its potential impact on a variety of employment policies and practices.

SAVE THE DATE:

Bugbee & Conkle's

FREE Annual Workers' Compensation Seminar

March 5, 2015 12:30 — 4:30 p.m.

Hilton Garden Inn Perrysburg, OH

If you have any questions concerning any of the topics in this issue of *The Employer*, please contact a member of our Labor and Employment Law practice group at (419) 244-6788.

Tybo Alan Wilhelms (twilhelms@bugbeelawyers.com)
Mark S. Barnes (mbarnes@bugbeelawyers.com)
Carl E. Habekost (chabekost@bugbeelawyers.com)
Dana R. Quick (dquick@bugbeelawyers.com)