U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

OCT 18 2016

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

FROM: DOROTHY DOUGHERTY
Deputy Assistant Secretary

SUBJECT: Extended delay of enforcement of the employee involvement provisions under 29 CFR 1904.35

The final rule to Improve Tracking of Workplace Injuries and Illnesses contains three new employee involvement provisions that address employer conduct that could discourage employees from reporting work-related injuries or illnesses. The final rule clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and therefore must not deter or discourage reasonable employees from reporting work-related injuries or illnesses (1904.35(b)(1)(i)); requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation ((b)(1)(ii)-(iii)); and incorporates into Part 1904 the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses ((b)(1)(iv)). These provisions became effective on August 10, 2016.

OSHA initially delayed enforcement of these provisions until November 1, 2016, to allow time for additional outreach to the regulated community. On October 14, 2016, the United States District Court, Northern District of Texas, asked OSHA to further delay enforcement through December 1, 2016 to allow additional time to consider a motion pending before the court in a case challenging the new provisions, *TEXO ABC/AGC Inc. v. Perez*, No. 3:16-cv-01998-D (N.D. Tex.). OSHA has agreed and will delay enforcement of the employee involvement provisions of the final rule until December 1, 2016.