



The Quirks of Mid-Atlantic State OSHA Plans: North Carolina

Insights

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While a “State-OSHA Plan” must at least meet Fed-OSHA standards, these plans often develop their own additional requirements and have widely varying enforcement and appeal processes. When Federal OSHA adopts a new regulation, such as the recently instituted requirement to report all amputations and single hospitalizations for treatment within 24 hours, the regulation became effective immediately in states where the Federal Government enforces the Occupational Safety and Health Act¹. On the other hand, most State OSHA Plans do not automatically adopt Fed-OSHA changes.

Many state programs require the approval of its state legislature before the federally adopted regulation becomes the law. For instance, state plans like Virginia and South Carolina did not adopt the changes until on or after July 1, 2015.

North Carolina OSHA, however, has found a way to make most, if not all, Federal OSHA regulations immediately effective in its state. North Carolina enacted a law providing that it will adopt all Federal OSHA regulations immediately, unless the state Commissioner opts to adopt an alternate state rule as effective as the Federal requirement.

Watch the Feds’ actions if you operate a business in North Carolina!

Under this law, OSHA’s new reporting requirements, such as reporting an amputation within 24 hours, became effective on January 1, 2015, just like in Federal plan states. Many North Carolina employers were unaware of this requirement. We’ve heard reports of a number of accidents that were not timely reported, not intentionally, but rather because the employer was not aware that NC-OSHA automatically adopts most Fed-OSHA changes.

If you operate a business in North Carolina, watch what happens in Washington!

Referral-based inspections have increased in North Carolina.

The recently adopted 24 hour amputation and single hospitalization reporting rule has increased the number of referral-based inspections occurring in North Carolina. Nationwide, OSHA has received well over 5000 reports which require some sort of response.

OSHA may inspect a worksite under various sources of authority, including inspections conducted as the result of an employee lodged complaint; as the result of a referral- generally self-reported by the employer or from the media due to reports of an accident: or as part of an OSHA program

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("programmed inspections")- these inspections take place because the employer appears on a list created by OSHA relating to an emphasis program it has undertaken, including National Emphasis Programs (e.g., fall protection, chemical issues (PSM-related processes)).

In June 2015 the Department of Labor reported that 15% of NC-OSHA inspections were referral based, which includes self-reported amputations. By comparison, only 8% occurring in June 2014 were conducted as the result of a referral.

This trend continued in July 2015. During that month, the Department of Labor reported that 17% of the inspections conducted were referral based. This compares to just 11% of the 317 inspections last July.

We anticipate that this trend will continue, in North Carolina and other states throughout the country, as employers continue to report amputations and single hospitalizations under the newly adopted law.

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1. Some state plans, such as South Carolina, adopt regulations immediately if the change is a substantive amendment to a standard.

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Travis W. Vance
Regional Managing Partner
704.778.4164
[Email](#)