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OSHA Retaliation Enforcement Rule Delayed Until December 1, 2016

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The **Occupational Safety and Health Administration (OSHA)** announced new regulations in May 2016 addressing reporting of injuries and illnesses. These rules included certain anti-retaliation provisions that may restrict safety incentives, immediate injury reporting rules, and drug testing. The rules initially were to take effect in August of 2016. (For more information, view our previous alerts on the final rule: [Part 1](#) & [Part 2](#)).

On July 13, 2016, OSHA [announced](#) that it was pushing back the effective date of the anti-retaliation provisions of the final rule from August 10, 2016 to November 1, 2016. A link to OSHA's original press release can be found [here](#). The purpose of the delay was so OSHA could conduct "additional outreach and provide educational materials and guidance for employers."

A Texas court has now prompted OSHA to self-impose an additional delay until December 1, 2016, before the anti-retaliation provisions of the final rule will be effective. This latest delay is directly related to a legal challenge to the final rule filed by the Manufacturers' Center for Legal Action on July 8, 2016, in the U.S. District Court for the Northern District of Texas. The Manufacturers' Center is asking for a declaration that, among other things, the anti-retaliation provisions are unlawful and exceed OSHA's statutory authority.

Additionally, the Manufacturers' Center is seeking emergency injunctive relief to postpone the implementation of portions of the final rule pending the resolution of its legal challenge. Although not explicitly stated initially, the Manufacturers' Center recently clarified that it is requesting the injunctive relief to be applied nationwide and to include entities that are not parties to the legal challenge. OSHA objected to this request, claiming the nationwide injunction request was late and is overly broad.

On October 14, 2016, the U.S. District Court for the Northern District of Texas issued an Order, stating that further briefing by the parties was needed to determine the necessary scope and propriety of the injunctive relief that the Manufacturers' Center is seeking. To accommodate the additional briefing, the court essentially directed OSHA to voluntarily agree to extend the deadline of the final rule to December 1, 2016, and OSHA subsequently agreed. Accordingly, the new deadline for the effective date of the final rule's anti-retaliation provisions is December 1.

A copy of OSHA's memorandum extending the deadline is available [here](#).

The next step in this process should be a ruling by the court on the nationwide injunction. Stay tuned as we monitor the dramatic changes that this new rule may bring.

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