

THE
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It's Official...OSHA's "Volks" Rule is Invalidated

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April 4th, 2017 **President Trump** signed **H.J. Res 83**, which finalized the **Congressional Review Act ("CRA")** process and nullified OSHA's rule "*Clarification of Employer's Continuing Obligation to Make and Maintain Accurate Records of Each Recordable Injury and Illness*," informally referred to as the "**Volks**" rule.

Under the CRA once the joint resolution of disapproval of the rule is signed by the President the "rule shall not take effect (or continue)." Further, OSHA is now prohibited from promulgating a rule "in substantially the same form" as the disapproved rule.

This means that OSHA is prohibited from issuing employers citations for failing to record injuries or illnesses beyond the six-month statute of limitations set out in the OSH Act, which is precisely what the U.S. Court of Appeals for the District of Columbia held when it decided the Volks decision. *AKM LLC d/b/a Volks Constructors v. Sec'y of Labor*, 675 F.3d 752 (D.C. Cir. 2012).

While OSHA is prohibited from issuing citations beyond the six-month statute of limitations, employers are still required to maintain injury and illness records for 5 years. And during that 5-year time period, employers should continue to update their OSHA 300 Logs when new or additional information is discovered that may impact a determination of recordability.

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