



FACT SHEET

House Committee on Education and Labor
Chairman Robert C. "Bobby" Scott

Accurate Workplace Injury and Illness Records Restoration Act

Legislation comes as a new Government Accountability Office report finds more than half of employers are violating their legal duty to submit workplace safety reports

On February 18, the Government Accountability Office (GAO) issued a report, [Workplace Safety and Health: Actions Needed to Improve Reporting of Summary Injury and Illness Data](#), revealing the failure of the Occupational Safety and Health Administration (OSHA) to enforce its recordkeeping requirements.

That same day, Congressman Mark Takano (CA-41), Education and Labor Chairman Robert C. "Bobby" Scott (VA-03), Workplace Protections Subcommittee Chair Alma Adams (NC-12), and Congressman Joe Courtney (CT-02) introduced legislation to strengthen OSHA's enforcement of workplace safety laws.

About the GAO Report

The GAO's report, *Workplace Safety and Health: Actions Needed to Improve Reporting of Summary Injury and Illness Data*, included two notable findings regarding compliance with and enforcement of OSHA's recordkeeping requirements.

Over half of employers who are required to electronically submit their OSHA injury & illness summary (Form 300A) each year under OSHA's 2017 "electronic recordkeeping rule" have failed to submit the reports in each of the first three years of the program. OSHA has not taken effective steps to encourage compliance.

OSHA uses injury & illness reports to more effectively target its inspections to the most hazardous workplaces under its Site-Specific Targeting (SST) program. Employers and workers need accurate records to identify health and safety problems in the workplace and correct them.

GAO's report found low rates of compliance with its electronic recordkeeping rule. It also determined that OSHA has done a poor job enforcing violations of and has no plans for increasing compliance.

In FY 2019, for example, OSHA sent follow-up postcards to only about 27,000 out of nearly 220,000 employers identified through OSHA's analysis that did not submit their 300A data. Generally, OSHA only cites employers for non-compliance with the recordkeeping rule when the agency identifies a violation during an onsite inspection. But OSHA conducts relatively few onsite inspections and the *Volks* decision (see below) makes it difficult for OSHA to cite recordkeeping or reporting violations.

Between December 15, 2017 (when covered employers were first required to submit 300A data) and September 30, 2019, OSHA issued only 255 citations to employers for failure to report their 300A data.

Table 1: Estimated Compliance with the Annual Summary Injury and Illness (300A) Reporting Requirement, Calendar Years 2016-2018

Calendar year	Estimated number of establishments that met the 300A data reporting requirement	Establishments whose employers submitted required 300A data	
		Number	Percent
2016	451,000	159,000	35%
2017	454,000	189,000	42%
2018	459,000	212,000	46%

Source: GAO analysis of U.S. Census Bureau County Business Patterns data and Occupational Safety and Health Administration (OSHA) 300A injury and illness data employers reported to OSHA. | GAO-21-122.

Enforcing compliance with OSHA’s injury recording and reporting requirements is particularly important because employers have an incentive *not* to comply—since not reporting their injury and illness summaries decreases the likelihood that their establishments will be selected for a targeted OSHA inspection.

Congressional Republicans’ 2017 repeal of OSHA’s “Volks Rule” using the Congressional Review Act has significantly weakened OSHA’s ability to enforce recordkeeping requirements and has reduced the number of recordkeeping citations issued by OSHA.

The GAO report traced OSHA’s weak enforcement of recordkeeping requirements to a 2012 federal court decision and a 2017 action by Republicans in Congress.

OSHA’s normal statute of limitations for citing a violation is six months from the time the violation is identified. Employers are required to record work-related injuries and illnesses on OSHA Form 300 and retain an accurate log for five years. Since 1972, OSHA had considered a recordkeeping violation—such as a failure to record a work-related injury on OSHA Form 300—to constitute a “continuing violation” any time an injury or illness is unrecorded during that five-year period. Therefore, for any such violation, OSHA’s normal six-month statute of limitations for OSHA citations would begin at the end of the five-year period for which the employer was required to retain OSHA recordkeeping forms.

But a 2012 federal appellate court decision (*Volks Constructors*) upended this 45-year precedent. The so-called “*Volks Decision*” required OSHA to change its enforcement policy for recordkeeping violations to six months from the initial violation, instead of citing a continuing violation. As a result, whereas prior to the *Volks* decision, OSHA issued citations to employers for recordkeeping violations for up to about five-and-a-half years from the date that the initial violation occurred, the *Volks Decision* shortened that time to six months.

Because OSHA visits so few workplaces each year – much less within a six-month period -- this decision made it difficult for OSHA to cite recordkeeping violations and almost impossible for the agency to identify and cite deliberate patterns of under reporting and to force changes, not just on those employers’ recordkeeping practices, but on the underlying unsafe work practices that caused the injuries.

OSHA’s recordkeeping citations fell sharply after the *Volks Decision*. Over the period from FY 2005 to 2019, OSHA cited employers for a total of 35,751 recordkeeping violations. Sixty-five percent of these violations occurred *before* the *Volks* decision and only 35 percent occurred *after* the *Volks* decision, despite a similar length of time before and after the decision.

In January 2017, OSHA issued a regulation restoring the agency’s ability to cite continuing violations, but before it could go into effect, the rule was repealed by the Republican Congress and President Trump under a 2017 Congressional Review Act Resolution of Disapproval. This Resolution effectively restricted OSHA’s ability to cite recordkeeping violations to just six months from the initial date the injury should have been recorded.

About the *Accurate Workplace Injury and Illness Records Restoration Act*

The *Accurate Workplace Injury and Illness Records Restoration Act*:

1. Amends the six-month statute of limitations in the *Occupational Safety and Health Act* so that the six-month clock starts running on the date OSHA identifies a continuing violation, instead of on the first date that the violation occurs.
2. Reverses the 2017 Congressional Review Act Resolution of Disapproval.
3. Requires OSHA to issue a new regulation clarifying that an employer’s obligation to make and maintain accurate injury and illness records is a continuing obligation.