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Client Alert

An overview of recent legal developments from the attorneys of Segal McCambridge

Court Limits Time for OSHA Violations

by Theodore Flowers & David Yavil

A recent court opinion may directly impact your business. The Occupational Safety and Health Administration (OSHA) can now only lodge record keeping violations against an employer within six months of the alleged violation. However, that limitations period may also apply to other types of violations.

On April 6, 2012, the U.S. Court of Appeals for the D.C. Circuit sharply limited the period of time that companies can be cited for occupational safety and health reporting violations. The decision, in *AKM, LLC d/b/a Volks Constructors v. Secretary of Labor*,¹ amends and radically alters OSHA's prior practice of citing employers for record keeping violations for up to five years from the violation. By statute, Section 9(c) of the Occupational Safety and Health Act ("Act") explicitly states that "No citation may be issued...after the expiration of six months following the occurrence of any violation."²

Prior to the *AKM* decision, OSHA would sometimes issue citations to employers for up to five years for failing to properly report work related injuries. OSHA's reliance on the five-year statute of limitations was premised on the Act's five-year document retention requirement. OSHA previously contended that violations for failure to report injuries were "continuing violations," which meant that the statute of limitations did not expire until the end of the Act's five-year document retention period. The *AKM* court held that the Act's six month violation period is clear and that the language "occurrence" as

contained in the Act clearly refers to a discrete event. Furthermore, the court noted that the "continuing violations doctrine" should be the exception, rather than the rule. As such, the *AKM* decision may be applicable to other potential violations of the Act.

Regardless, the court indicated that OSHA's argument of "continuing violations" may be meritorious if violations were "truly" ongoing. The court noted "where, for example, a company continues to subject its employees to unsafe machines...OSHA may be able to toll the statute of limitations on a continuing violations theory since the dangers created by the violations persist."

The *AKM* decision is clearly a benefit to employers. However, it is very specific to OSHA record keeping violations. Employers must still be mindful of the continuing violations doctrine applicable to other potential OSHA violations.

Segal McCambridge is a full-service litigation defense firm with experience handling employer liability in Pennsylvania and New Jersey. Please contact us with any questions concerning this client alert and to learn more about our legal services.

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1 2012 U.S. App. LEXIS 6940 (D.C. Cir. 2012). A complete copy of the court's opinion can be found on our website under the News and Publications tab.

2 29 U.S.C. §658 (c).