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Proposed Amendments Could Substantially Broaden Kentucky's Workplace Injury and Illness Reporting Requirements

On Feb. 12, 2020, the Kentucky Labor Cabinet's Department of Workplace Standards announced proposed amendments to the state's regulation concerning injury and illness reporting requirements for workplace incidents resulting in the loss of an eye, hospitalization, amputation, and/or death.

Under existing law, employers in Kentucky are required to report "work-related incidents" that result in the death of an employee and/or hospitalization of three or more employees within 8 hours of the incident. Employers in Kentucky are also required to report "work-related incidents" that result in an amputation, loss of an eye, or the hospitalization of fewer than three employees within 72 hours of the incident.

Work-relatedness has been a touchstone of injury and illness recording and reporting requirements under both federal and Kentucky regulations since the adoption of the Occupational Safety and Health Act (OSHA) in 1970. Except in certain limited circumstances, if an injury or illness is not work-related, it need not be reported to OSHA. Although there is a presumption under federal regulations and other guidance that an injury or illness occurring in the work environment is work-related, that presumption is rebuttable. That may change in Kentucky if the proposed amendments are adopted by the Department of Workplace Standards.

The Department of Workplace Standards now proposes to eliminate the work-relatedness requirement under existing Kentucky law. If adopted, the proposed rule would require every eye loss, hospitalization, amputation, and/or death that "occurs in the work environment, or is caused or contributed to by an event in the work environment" be reported to Kentucky OSHA, regardless of whether

those injuries or events are work-related. The proposed amendment would also require that any heart attack that occurs in the workplace that results in death or hospitalization be reported to OSHA, regardless of whether any event or exposure in the workplace caused or contributed to the heart attack.

The Department also proposes to substantially broaden the types of hospitalizations that are considered reportable events. Under existing law, a hospitalization need only be reported if it is “in-patient hospitalization.” Under federal regulations and guidelines, an in-patient hospitalization that involves only observation and/or diagnostic testing need not be reported. Under the proposed amendment, however, Kentucky OSHA would require all formal admissions to a hospital — including those for observation and/or diagnostic testing — be reported.

The proposal also seeks to clarify an employer’s reporting obligation when an eye loss, amputation, hospitalization, or death occurs more than 72 hours (or 8 hours in the case of death or mass hospitalization) after an incident in the workplace. The proposed rule maintains the requirement that for a hospitalization of one or two employees to be reportable, it must occur within 72 hours of the incident. For amputation and eye loss injuries, however, the proposed rule appears to do away with any time-frame for reportable injuries to occur. Therefore, under the proposed rule, a surgical amputation that is performed more than 72 hours after some workplace event or exposure that caused or contributed to the need for the procedure would need to be reported, even if the procedure was not performed until weeks or months later.

These amendments have not yet been formally adopted, and a public hearing on the proposed rule change will be held on April 23, 2020, at the Kentucky Labor Cabinet. Any interested individuals may be heard at the hearing and comment on the proposed changes by notifying the agency of their interest in writing at least five days before the hearing. Because Kentucky operates a state plan for occupational safety and health, the Kentucky reporting requirements outlined above (including any changes to those requirements adopted by the Department of Workplace Standards)

will be applicable only to employers in Kentucky.

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