



**U.S. POSTAL SERVICE: THE
INTERFACE BETWEEN
OSHA'S RECORDKEEPING RULE
AND FMLA'S PRIVACY
REQUIREMENT**

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TOPICS TO BE DISCUSSED

- Facts of the Review Commission Decision
- FMLA Privacy Requirements
- OSHA's Recordkeeping Requirement
- Impact for Employers
- Is this Decision of Limited Applicability?



FACTS OF THE REVIEW COMMISSION DECISION

- Employee “A” submitted an FMLA leave request form, HCP stated that she had an illness “caused by her work environment exclusively.”
- Reported only to the FMLA coordinator
- No evidence that USPS knew of her illness from any other source
- USPS did not record the illness on its OSHA 300 or 301
- OSHA later issued a citation for the omission



FMLA RECORDKEEPING

- FMLA Recordkeeping Requirements
(29 CFR § 825.500(g))
 - Records re: FMLA shall be maintained as confidential
 - Kept separate from usual personnel files
 - Supervisors may be informed of necessary restrictions and accommodations



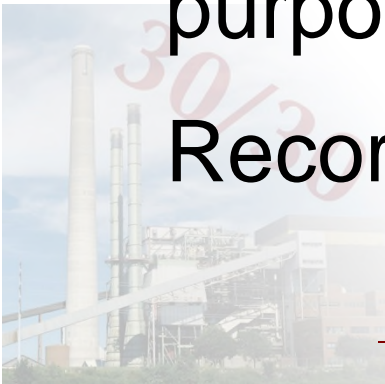
USPS ARGUMENTS:

- The FMLA has confidentiality rules
- USPS's FMLA coordinator knew of Employee A's illness
- USPS: That knowledge should not be imputed to USPS



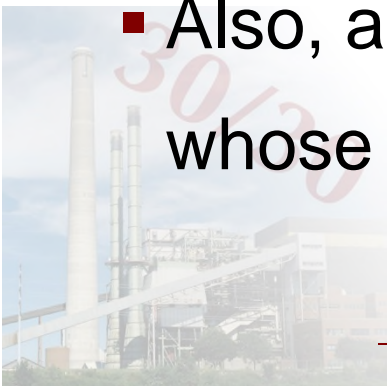
OSHA's ARGUMENTS:

- USPS had constructive knowledge about a work-related illness
- USPS's FMLA coordinator would have been permitted to share illness related information with a supervisor for the purposes of complying with the Recordkeeping standard



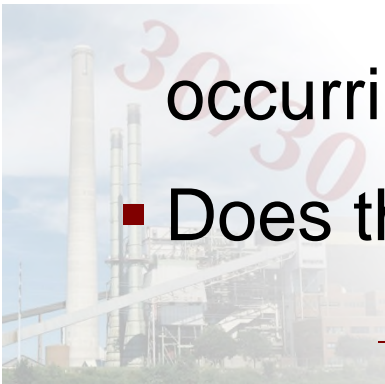
REVIEW COMMISSION

- The FMLA prohibits disclosure of FMLA information to supervisors unless it involves necessary work restrictions or accommodations or for emergency treatment.
- Because this is an enclosed list, purposes that are not expressly acceptable are not permitted.
- Also, an FMLA coordinator was not a supervisor whose knowledge could be imputed to USPS.



SCOPE OF OSHA'S RECORDKEEPING REQUIREMENT

- Not addressed in this case: Would an employee's HCP's statement that her absence is due to an illness related to the workplace suffice?
- Employer must consider illness work-related if an exposure in the work environment contributed to the resulting condition or significantly aggravated it.
- Presumed for illness resulting from exposure occurring in the workplace.
- Does this include work-related stress?



IMPACT FOR EMPLOYERS:

- Employers should view this as a victory
- However, the employer burden under the OSHA recordkeeping rule is unchanged
- Recordkeeping training for supervisors
- Communicating responsibilities to employees and supervisors
- Preparing documents for inspection
- Impact on companies that use outside vendors for FMLA, etc.



HOW USEFUL IS THIS DECISION?

- This does not constitute an exception to the recordkeeping requirement
- It applies where the person taking the FMLA information is:
 - Not a supervisor
 - Distinct from the person with duty to make recordable decisions



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Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. On developing legal issues, he has been quoted or interviewed in *The Wall Street Journal*, Bloomberg, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," WAVY-TV and C-SPAN. He was listed in *Smart CEO Magazine's* Readers' Choice List of Legal Elite.

Mr. Rath has extensive experience representing industry in OSHA rulemakings. He has successfully represented employers—including some of the largest in the country—in OSHA citations and investigations before federal OSHA in regions across the country and in state plan states.

Mr. Rath currently serves on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He is the editor and co-author of the OSHA chapter of the *Employment and Labor Law Audit* (9th and 10th Editions) and a co-author of the book *Occupational Safety and Health Law Handbook* (2001).

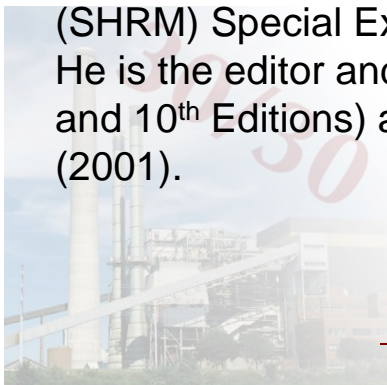


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