



OSHA 30/30[®]

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

www.khlaw.com/osha3030

Court Ruled on Whether OSHA Can Require Recordkeeping for Mental Health Conditions

August 19, 2026

Manesh Rath



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. He has been called to testify before Congress in several hearings relating to OSHA law.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been interviewed in The Wall Street Journal, Bloomberg, Smart Money, Entrepreneur, on PBS's Nightly Business Report, and C-SPAN.

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

He was voted by fellow members to The Best Lawyers in America 2016-2025 (in 2023, was voted as Lawyer of the Year); selected by Super Lawyers 2016 – 2023; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



Manesh Rath
Partner
rath@khlaw.com
202-434-4182

Victoria Tinker



Victoria Tinker advises clients on litigation matters in multiple areas, including false claims, product liability, and regulatory compliance. She represents clients, from emerging start-ups to Fortune 500 companies, before state and federal courts.

Victoria is adept at identifying pathways to resolve client disputes before the need for litigation; however, if litigation is unavoidable, her extensive experience proves invaluable to clients. She handles all aspects of litigation, including pre-trial dispositive and procedural motions, extensive discovery processes, expert witnesses - in addition to having first chair trial experience - all while collaborating with partners and key stakeholders to develop the most compelling litigation case.

Prior to joining Keller and Heckman, Victoria was a commercial litigation associate in private practice where she focused on a broad array of corporate matters, including contract, partnership, and real property disputes. During law school, Victoria served as a student attorney for the Washington College of Law Civil Advocacy Clinic.



Victoria Tinker
Associate
tinker@khlaw.com
202.434.4263

Topics to Be Discussed

- ◆ Facts of the case: *ExxonMobil Corporation v. OSHRC*
- ◆ Background on OSHA Recordkeeping Requirements
- ◆ OSHA's Citation and Its Arguments
- ◆ *ExxonMobil's* Reasons for Not Recording
- ◆ The Fifth Circuit's Decision
- ◆ What Employers Should Do

Facts of the case: *ExxonMobil Corporation v. OSHRC*

- ◆ December 2021, in Baytown, Texas, a large Exxon Mobil petroleum refinery was undergoing repairs when a pipe burst, causing a large explosion
- ◆ Fire lasted for over eight hours
- ◆ Resulting destruction took over five months to fix
- ◆ Employee Two rushed to the fire, Firefighters outfitted him with a fire suit
- ◆ He led them to several valves for shut off
- ◆ Came out, recovering, learned that he had to go back in



Facts of the case: *ExxonMobil Corporation v. OSHRC* (2)

- ◆ Aftermath of Explosion
- ◆ Employee Two met with grief counselors
 - ◇ Met with a doctor in Exxon's EAP program
 - ◇ Met with psychotherapist
 - ◇ Met his primary health provider
 - All diagnosed him with “textbook case” of PTSD



Facts of the case: *ExxonMobil Corporation v. OSHRC* (3)

- ◆ Exxon risk management team determined that they were not qualified to diagnose recordable work-related illnesses
- ◆ Two met with a doctor in Exxon's EAP portal and was also diagnosed with PTSD
- ◆ Exxon asked for a second opinion, Two refused
- ◆ Exxon sent paperwork to its own physician who concluded that Two did not have PTSD
- ◆ Exxon decided not to record the event



Background on OSHA Recordkeeping Requirements



- ◆ OSH Act directed OSHA to create a rule requiring the recording of all work-related deaths, injuries, and illnesses
 - ◇ Other than minor injuries requiring only first aid, medical treatment, etc.
- ◆ Purpose of the statutory provision
 - ◇ To develop information regarding the causes and prevention of occupational accidents and illnesses
- ◆ OSHA promulgated a standard that states: ***Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a health care professional stating that the mental illness is work-related.***
(1904.5(b)(2)(ix))

OSHA's Arguments

- ◆ OSHA argued that Congress granted OSHA the power to require recording of work-related deaths, injuries, and illnesses
- ◆ And that “illness” encompasses both physical and mental illnesses



ExxonMobil's Reasons for Not Recording

- ◆ Exxon relied on its second opinion, which concluded that Two's case of PTSD was not a recordable work-related mental illness



Fifth Circuit's Decision

- ◆ The OSH Act leaves the term “illness” undefined
- ◆ The context in which “illness” is used seems intended only to cover illnesses that are physical ailments
- ◆ The minor injuries exclusion addresses only physical, not mental, harm
 - ◇ Such as: medical treatment, consciousness, restriction of work or motion, or transfer to another job



What Employers Should Do



- ◆ Review current written procedures for recordability of illnesses
- ◆ This is only a decision from the Fifth Circuit, it is advisory elsewhere
 - ◇ In jurisdictions outside of the Fifth Circuit, do not record mental illnesses if an employee does not voluntarily provide documentation from a certified health care provider that the mental illness was work-related and requires medical treatment greater than first aid
- ◆ Recollect that OSHA guidance permits the employer to seek a second opinion provided that the employer does not believe that the mental illness is work-related



Please join us at 10:00 AM Eastern U.S.
August 26, 2026
www.khlaw.com/REACH-3030



Please join us at 1:00 PM Eastern U.S.
TBD
www.khlaw.com/TSCA-3030



OSHA 30/30[®]

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

www.khlaw.com/osha3030

at 1:00 p.m., Eastern Time

September 16, 2026

www.khlaw.com/OSHA3030

A large, stylized diamond graphic on the left side of the slide, composed of a grid of small dots in a light gray color.

Thank You

Manesh Rath

Partner

1001 G Street N.W. Ste. 500W

202.434.4182

rath@khlaw.com



Victoria Tinker

Associate

1001 G Street N.W. Ste. 500W

202.434.4263

tinker@khlaw.com

