

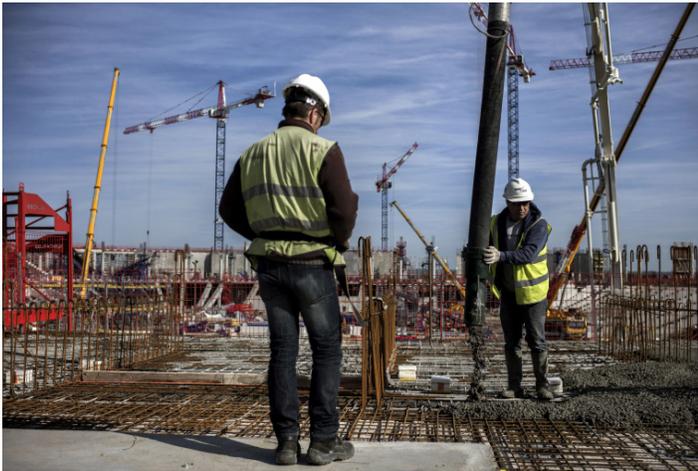
COMMERCIAL OBSERVER

BY DANIELLE BALBI

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Repeal of Federal Record-Keeping Rule Could Put Construction Workers at Greater Risk

Earlier this week, the Republican-led Senate voted 50-48 to repeal a federal Occupational Safety and Health Administration (OSHA) rule that requires large companies to maintain records of workplace health and safety incidents for up to five years. The House of Representatives voted in favor of the repeal earlier this month, and if President Donald Trump approves it, employers in dangerous industries would only be liable for track work-related injuries for six months.



The repeal would be welcomed by some construction companies and developers because it would cut down on paperwork and the associated costs of keeping those records, but the question is whether that comes at the risk of construction worker safety, said **Raymond Mellon**, a senior partner at law firm **Zetlin & De Chiara**, who specializes in construction.

Under the current rule, construction companies and contractors are held accountable for any injuries on their sites going back five years. If there is a new injury or death at a workplace, and the company's record shows previous incidents during that time frame, "any plaintiff would make hay of that in a lawsuit," Mellon said. Abolishing the rule would be "a way to try to shield companies to the extent that they have bad practices that are documented by OSHA. Construction work is a dangerous job and it becomes more dangerous when you allow things to be relaxed."

Gary LaBarbera, the president of the Building and Construction Trades Council of Greater New York, pointed to the 30 deaths on construction sites in New York City over the last two years as evidence of why there needs to be greater accountability in the industry.

"Anything that is going to reduce OSHA's role in protecting workers is the wrong direction to go," he said. "The only thing it really does is aid unscrupulous contractors who are willing to risk the safety and health of their workers."

And shortening the statute of limitations to six months would also limit OSHA's ability to investigate repeated offenders, said **Joshua Spitalnik** of **The Law Office of Joshua Spitalnik**. And as it stands, OSHA has been underfunded and understaffed. According to a **AFL-CIO** report from April 2016, the regulatory body could only "inspect workplaces on average once every 84 years."

The president may very well vote to repeal the rule—which **Barack Obama** had passed late in his presidency—as his administration has made an effort to limit federal agencies' abilities to regulate big corporations.

However, the rule "doesn't change the obligations of contractors to maintain those records" in the first place, Spitalnik said.

"If you're a general contractor doing work for a [city] agency or a very sophisticated developer, they would want to see those safety records, too," he said. "No one wants accidents on a job site. It's bad for workers and it's bad for the developers as well. Aside from a human life, it impacts their bottom line."

Others would applaud the appeal of the rule because of its focus on keeping records and filing paperwork fails to address actual issues at jobsites.

Joshua Reap, the vice president of public affairs for the **Empire State Chapter of Associated Builders and Contractors**, which represents nonunion contractors nationwide, said that the paperwork associated with the law is burdensome, and that contractors are still required to fill out reports like Form 300, which is a log of work-related injuries.

"The regulation didn't do anything to improve jobsite safety. Instead it places an enormous paperwork burden on contractors," he said.

LaBarbera felt that the paperwork excuse was "disgusting."

"We are talking about people's health and safety," he said. "We're talking about workers getting injured or workers getting killed and for any employer to take the position, 'Well it's a pain in the neck because it's an administrative problem,' is actually incredulous."

If the law is repealed on the federal level, Mellon noted that local authorities may seek to regulate that type of record keeping, and LaBarbera said that it would be an effort that BTEA would certainly be a part of.

"Part of our strategy is to work as closely and collaborate with our local government to try to protect the interest of workers," LaBarbera said. "If [employers] took proactive steps to reduce accidents and fatalities, especially in nonunion [sites], guess what? They wouldn't have to be filling out those records and paperwork."

With additional reporting provided by Liam La Guerre.