

## OSHA boards executive accountability ship

Much has been written about the provisions in the new Sarbanes-Oxley Act, which makes executives more accountable for the accuracy of their firm's SEC disclosures. What has received less attention, but could be even more important to many executives, is the Occupational Safety and Health Administration's new recordkeeping accountability provisions.

Beginning Feb. 1, 2003, all covered employers must have a company executive certify the employer's annual summary of work-related injuries and illnesses. Specifically, an executive must certify in writing that he or she has examined the injury summary and that it is true, accurate and complete.

An executive's failure to properly certify the summary can result in fines for the company and may increase the penalties for any errors that OSHA discovers. A false certification could also make an executive personally liable for the falsity.

In the past, OSHA required certification only by the person who actually kept the

injury log throughout the year. This is almost always a safety or human resources employee, not an executive.

The new law defines a company "executive" as (1) an owner of the company (only if the company is a sole proprietorship or partnership); (2) an officer of the company; (3) the highest-ranking official working at the establishment; or (4) the immediate supervisor of the highest-ranking official working at the establishment.

This new law will call for executives, who likely have no prior safety experience or expertise, to educate themselves on the new criteria for determining what constitutes a recordable injury or illness. The regulations state that the executive must reasonably believe that the summary is accurate based on his or her knowledge of the process by which the injury information was recorded.

OSHA has suggested in commentary that at a minimum, the executive must be familiar with the OSHA recordkeeping requirements, the company's record-keeping

practices and the company's injury log itself.

Despite this limited guidance, there are still many unanswered questions. For example, how much knowledge must an executive have to be "familiar" with the intricate recordability criteria? Must an executive evaluate whether particular injuries should have been recorded?

Until these and other questions regarding the certification requirement are answered, covered employers would be advised to err on the side of caution. At a minimum, covered employers should assure that their chosen executives receive education and training sufficient to understand OSHA's new recordkeeping criteria and to apply that knowledge to the company injury log. Feb. 1 is right around the corner.

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