

New OSHA Rule Creates Electronic Reporting Requirement

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The United States Occupational Safety and Health Administration (OSHA) issued a Final Rule revising portions of its Recording and Reporting Occupational Injuries and Illnesses regulations (Recording and Reporting Regulations). The revisions take effect August 10, 2016.

Employers subject to the new requirements have until July 1, 2017 to submit electronically the required information for calendar year 2016. OSHA will make electronically-submitted workplace-safety data for each reporting employer available publicly in an online database.

The Recording and Reporting Regulations are found at Title 29, Part 1904 of the Code of Federal Regulations and generally require employers with 10 or more employees – except employers in certain partially exempt industries – to keep establishment-specific records of new, work-related injuries, illnesses, and fatalities on OSHA Forms 300 (a log of incidents), 300-A (an annual summary of logged incidents), and 301 (an individual incident report), or equivalent forms (Part 1904 Records). The Final Rule requires, for the first time, information recorded under Part 1904 by certain employers to be submitted electronically to OSHA.

Electronic Reporting Requirements

The Final Rule does not create new types of information for employers to collect. Rather, it requires certain employers to electronically submit data which they must already record under the existing regulations. Which data must now be submitted electronically depends on the employer's size – total number of employees in the entire company, not in a single establishment/facility – and industry.

- Employers required to keep Part 1904 records and with 250 or more employees are required to electronically submit information from all three Part 1904 Records – the log, the annual summary, and the individual incident reports. This requirement will be phased in over two years. In the first year, these employers are required to electronically submit information from OSHA Form 300A only by July 1, 2017. In the second year, these employers are required to submit information from OSHA Forms 300, 300-A, and 301 by July 1, 2018.
- Employers required to keep Part 1904 records operating in designated high-hazard industries and sectors, and with 20 to 249 employees, are required to electronically submit information only from OSHA Form 300A – the annual summary. Among those high-hazard sectors and industries addressed in the Final Rule are the construction, manufacturing, utilities, and wholesale trade sectors, as well as industries including a variety of stores, transportation and transportation support providers, hospitals and healthcare facilities, entertainment and sports venues, among others.

Advising Requirement and Retaliation Prohibition

The Final Rule also amends the Recording and Reporting Regulations as to how employers inform employees to report work-related injuries and illnesses. The Final Rule requires employers to inform employees that:

- Employees have the right to report work-related injuries and illnesses; and

- Employers are prohibited from discharging or in any manner discriminating (*i.e.*, retaliating) against employees for exercising that right to report.

The Final Rule, of course, also requires employers to comply with that anti-discrimination/retaliation prohibition. Additionally, the Final Rule clarifies the rights of employees and their representatives to access injury and illness records.

We recommend all employers subject to OSHA's jurisdiction review their policies and procedures for recording and reporting work-related injuries and illnesses, as well as their employee handbook provisions on discrimination and retaliation, to ensure compliance with the regulations as revised by the Final Rule.

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