



OSHA Again Proposes that Employers Electronically Submit Workplace Injury Forms

Insights

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Federal workplace safety officials are once again proposing amendments to occupational injury and illness recordkeeping rules that would require certain employers to electronically submit injury and illness information to OSHA. Employers are already required to keep such records under the existing recordkeeping regulation, but the March 28 announcement would increase employer obligations by a dramatic degree. What do employers need to know about OSHA recordkeeping and the new proposed amendments, which will be formally released on March 30?

What Forms are Currently Required to Be Electronically Submitted to OSHA?

Most establishments that have 250 or more employees are currently required to electronically submit their Annual Form 300A summary in March of each year via OSHA's Injury Tracing Application. Establishments in certain high-hazard industries with 20 to 249 employees should verify that their NAICS code matches one on this list from OSHA before submitting the Form 300A electronically.

What are the Proposed Amendments?

The proposed rule would require certain establishments in various high-hazards industries to electronically submit additional information from their Log of Work-Related Injuries and Illnesses, as well as their Injury and Illness Incident Report. The proposed rule would:

- Notably, remove the current requirement in 29 CFR 1904.41(a)(1) for establishments with 250 or more employees not in a designated industry to electronically submit information from their Form 300A to OSHA annually.
- Require, instead, establishments with 100 or more employees in certain high-hazard industries (designated via a list in a new appendix B to subpart E of the recordkeeping standard) to electronically submit information from their OSHA Forms 300, 301, and 300A to OSHA once a year.
- Update the classification system used to determine the list of industries covered by the electronic records submission requirement in appendix A and the new appendix B mentioned above.
- Require establishments to include their company name when making electronic submissions to OSHA.

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Establishments with 20 or more employees in certain high-hazard industries will still be required to electronically submit information from their OSHA Form 300A annual summary to OSHA each year. OSHA estimates that the total private-sector cost for adherence to the new rule would be \$3,941,741 annually.

This proposal from OSHA under President Biden is very similar to the 2016 final rule from the Obama administration that was delayed and later rescinded during the Trump administration. The new proposed rule, like the prior Obama rule, may lead to attacks on certain employers with salacious details on their OSHA 300 or 301 forms by competitors, plaintiffs' lawyers, community activists, and union organizers. Data from employer OSHA 300A forms is already available on OSHA's website and litigants since 2020 have been successful in submitting FOIA requests for employer 300 forms with only the employee names redacted.

However, OSHA's proposed requirement that establishments with 100 or more employees in certain designated industries electronically submit information from their Forms 300 and 301 to OSHA on an annual basis represents a drastic change from the current requirements. The new rule would, according to OSHA, "provide systematic access for OSHA to the establishment-specific, case-specific injury and illness information" and allow "expanded public access to "establishment-specific, case-specific injury and illness data." Put plainly, "OSHA intends to make much of the data it collects public," including all data fields from employer 300 logs and fields 10-18 of the 301 forms — including a description of the recordable incident, the work the employee was doing, the nature of injury or illness, and what caused the injury.

Who Is Required to Fill Out and Maintain the OSHA Forms 300, 300A, or 301?

Some organizations are not covered by OSHA's recordkeeping requirements.

- Employers with 10 or fewer employees throughout the previous calendar year do not need to complete OSHA Forms 300, 300A, or 301. This partial exemption for size is based on the number of employees in the entire company at the company's peak employment during the last calendar year. If an employer had no more than 10 employees at any time in the last calendar year, that company qualifies for the partial exemption for size and does not need to fill out or keep these forms.
- There is also an exemption for establishments classified in certain industries. To see if you fall within this exemption, verify that any establishment owned by your company matches a NAICS code on this list from OSHA. An "establishment" is defined by OSHA as a single physical location of a company "where business is conducted or where services or industrial operations are performed." And remember, for activities where employees do not work at a single physical location (such as construction, transportation, communications, or electric, gas and sanitary services), an establishment is "represented by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities."

Regardless of whether you are required to keep these records, however, **all employers** must report to OSHA any employee's work-related fatality, in-patient hospitalization, amputation, or loss of an eye. A fatality must be reported within eight hours, and an in-patient hospitalization, amputation, or eye loss must be reported within 24 hours. For COVID-19 reporting, except for healthcare facilities covered by OSHA's healthcare ETS, the fatality must have occurred within 30 days of a work-related exposure, and a hospitalization must have occurred within 24 hours of a work-related exposure. If you do business in a state where a state agency rather than federal OSHA enforces the OSH Act (such as California, Kentucky, or elsewhere), reporting requirements may differ.

What Is the Form 300A?

The OSHA Form 300A is the annual summary of all recordable work-related injuries and illnesses that occurred at an establishment, including the total number of cases, the total number of days employees spent away from work or on restriction, and specific injury and illness types. Employers should accurately fill out their OSHA Form 300 and then annually carry those totals over to the Form 300A.

Once the Form 300A is completed, a company executive must certify that they have examined the OSHA 300 Log and that the annual summary is correct and complete. OSHA considers a "company executive" for Form 300A signature and certification purposes to be only: (1) an owner of the company (only if the company is a sole proprietorship or partnership); (2) an officer of the corporation; (3) the highest-ranking company official working at the establishment; or (4) the immediate supervisor of the highest-ranking company official working at the establishment. Employers should ensure that only one of these individuals signs the Form 300A to follow the requirements of the recordkeeping standard.

Then, each year, once completed and certified, the Form 300A must be posted at each establishment in a conspicuous place. If no recordable incidents or illnesses occurred in a given year, the Form 300A must still be completed, certified, and posted from February 1 to April 30. Employers must also maintain a digital or physical copy of the signed Form 300A that was posted for a period of five years to ensure they can provide compliance with the annual certification and posting requirements should OSHA conduct an inspection at the establishment in the future.

So What Is the Form 300 – and What Is Recorded?

Given that the Form 300A's data comes from the Form 300 (also known as the Log of Work-Related Injuries and Illnesses), employers must ensure that they accurately complete the Form 300. Copies of the OSHA forms with detailed instructions can be found here. Non-exempt companies must record most work-related employee fatalities, injuries, and illnesses on OSHA Form 300/logs for each establishment. Injuries and illnesses are recordable if they are work-related and result in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work,

licensed health care professional — even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness. You must enter each recordable injury or illness on the Form 300 within seven calendar days of receiving information that a recordable injury or illness has occurred.

An injury or illness is considered “work-related” if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. OSHA considers injuries and illnesses resulting from events occurring in the work environment to be work-related unless one of these specifically identified exception applies. For COVID-19 recordability, see our prior guidance here and here as to how employers can make a determination on whether a COVID-19 case is work-related.

And What is the Form 301?

Employers must complete an OSHA 301 Incident Report form, or an equivalent form, for each recordable injury or illness entered on the OSHA Form 300. The OSHA Form 301 includes information about the employee’s name and address, date of birth, date hired, gender, the name and address of the health care professional that treated the employee, as well as more detailed information about where and how the injury or illness occurred. Like the Form 300, employers must complete the Form 301 for each injury and illness within seven calendar days of receiving information that a recordable injury or illness has occurred.

Many employers use an equivalent form, which is permissible, if the form has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA 301. For example, many employers use an insurance form—typically the first report of injury used in many states for worker’s compensation reporting—instead of the OSHA 301 or supplement an insurance form by adding any additional information required by OSHA.

What Should Employers Do?

Employers should include what is required by OSHA regulations on the 300, 300A, and 301 forms – but be cautious not to include extraneous details. And, as discussed above, employers should evaluate each injury and illness to ensure that OSHA standards actually require that these be recorded. This is especially prudent given that OSHA uses form 300 data for its Site-Specific Targeting (SST) Inspections.

Starting March 30, employers may also submit comments on the proposed rule. Comments, along with any submissions and attachments, should be submitted electronically at the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions. After accessing “all documents and comments” in the docket (Docket No. OSHA-2021-0006), check the “proposed rule” box in the column headed “Document Type,” find the document posted on the date of publication of this document, and click the “Comment Now” link. Employers can also use this specific link.

And remember, if you do business in a state where a state agency rather than federal OSHA enforces the OSH Act (such as California, Kentucky, or elsewhere), recordkeeping requirements may differ.

Conclusion

If you have any OSHA Recordkeeping questions, contact the author of this insight, another member of our Workplace Safety and Catastrophe Management Practice Group, or your Fisher Phillips attorney for guidance. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information on OSHA issues.

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