

STATE OFFICIALS VOICE SUPPORT FOR OSHA'S PROPOSED RECORDKEEPING RULE – AND CALL FOR IT TO GO EVEN FURTHER

Insights
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A coalition of state Attorneys General, led by New Jersey's acting Attorney General Matthew Platkin, just submitted a [letter](#) to Labor Secretary Marty Walsh not only supporting OSHA's proposed injury and illness reporting rule but pushing for it to be expanded even further. The coalition includes New Jersey, California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, Oregon, Rhode Island, and Vermont (the "States"). While the attorneys general agreed that the proposed rule would be a "significant improvement" on the current reporting requirements, they argued it didn't go far enough. What would OSHA's proposed rule require of your organization – and what might the push from the States mean for your business?

What Would the Proposed Rule Require?

The proposed rule would require certain establishments in various high-hazard 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:

- 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 that establishments with 100 or more employees in certain high-hazard industries (designated

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via a list in a new appendix B to subpart E of the recordkeeping standard) 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; and
- require establishments to include their company name when making electronic submissions to OSHA.

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.

The States Want More

According to the coalition of attorneys general, “public reporting of case-specific data under the proposed rule will yield a litany of benefits for employees, consumers, and employers in the States, the States themselves, and researchers.” Among those benefits, they opine that employees will be empowered to make informed choices about where to work and consumers will be able to make informed choices of what purchases to make, with safe workplaces being rewarded. Further, the States with their own state-plan OSHA agency argue that they will be able to better target their enforcement efforts.

The States also highlight areas where the proposed rule could be further strengthened:

- First, the States believe that OSHA needs to provide additional information on its decision to rescind existing summary data-reporting requirements for all establishments with 250 or more employees. The States argue that removing existing reporting requirements for non-designated industries may disincentivize those establishments from maintaining adequate recordkeeping and investing in worker safety.
- Second, the States express concern about the misclassification of independent contractors, and that the proposed rule may not accurately track workplace injuries and illness. According to the States, many workers in

designated industries are misclassified as independent contractors. Therefore, the States push for OSHA to study the benefits of collecting data for all workers, regardless of classification.

- Finally, the States argue that OSHA should increase public awareness of the availability of the information being reported under the proposed rule. The States suggest that OSHA should require designated industries to post information about the availability of the data within the workplace and create partnerships with non-profit and non-governmental industries for training and outreach.

Clearly, the States do not think OSHA's proposed rule goes far enough. The States are pushing OSHA to expand the proposed rule to cover more employers and cover all workers, not just employees.

What Should Employers Do?

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](#).

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.