

BIDEN'S OSHA UPDATES ELECTRONIC RECORDKEEPING DIRECTIVE BEFORE TRANSITION – BUT WILL NEW ADMINISTRATION CHANGE COURSE?

Insights
Jan 31, 2025

In the last days of President Biden's administration, federal workplace safety officials issued an updated compliance directive on the controversial electronic recordkeeping policies and procedures rule that took effect last year – but questions remain about whether the rule itself will be scrapped under the new administration. The updated directive from the Occupational Safety and Health Administration (OSHA) is intended to replace a 2004 publication to reflect the agency's current views on policies and information and incorporate necessary revisions given regulatory changes that have occurred since then. What do employers need to know about this new directive – and what does the future hold?

Quick Background

A long-anticipated workplace safety rule took effect at the beginning of 2024 that prompted changes for certain employers that need to submit work-related injury and illness data. Specifically, the controversial electronic recordkeeping rule updated the list of employers considered to be in "high-hazard" industries and created new obligations for some employers. [You can read all about the rule here.](#)

Biden's Last OSHA Directive

Days before turning over the keys to the Trump administration, Biden's OSHA issued a [Recordkeeping Policies and Procedure Directive](#) to clarify certain workplace safety rules. Among the most significant:

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- The final rule issued in 2014 that revised the requirements of 29 CFR 1904 (Occupation Injury and Illness Recording and Reporting Requirements). This rulemaking updated the list of partially exempt industries and identified those by the **North American Industry Classification System (NAICS) code**. It also expanded the reporting requirements in section 1904.39 to include all work-related in-patient hospitalizations, amputations, and losses of an eye.
- The 2016 amendment to the recordkeeping regulation at 29 CFR 1904.41 that requires certain establishments to **submit information from their recordkeeping forms (Forms 300, 300A, and 301) to OSHA on an annual basis**.
- The final rule issued in 2019 that removed the 2016 requirement for establishments with 250 or more employees to electronically submit information from their OSHA Forms 300 and 301 to OSHA once a year – although those establishments must continue to be maintained on-site. As a result, those **establishments were required to electronically submit only information from their OSHA 300A annual summary**. Establishments with 20 to 249 employees in certain designated industries also continued to be required to submit OSHA Form 300A, as required by the 2016 rule.
- The 2023 rule that **further revised and expanded the requirements to electronically submit injury and illness data under section 1904.41**. The 2023 final rule requires establishments with 100 or more employees in designated industries to electronically submit certain information from their OSHA Form 300 and OSHA Form 301 to OSHA once a year. The 2023 final rule also updated the list of designated industries in which establishments with 20-249 employees must annually electronically submit information from their OSHA Form 300A annual summary and continued the requirement that establishments with 250 or more employees in all industries routinely required to keep Part 1904 records must annually electronically submit such OSHA Form 300A information.

What's Next?

It is unclear how the new administration may impact the existing regulations, be it the recordkeeping requirements or the requirement to file electronically. Our team predicts that new OSHA leadership under President Trump will once again



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re-visit electronic submission requirements, and you can expect the pendulum to swing back as it did under the first Trump administration. The agency could once again put electronic submission requirements back on the shelf. [You can read all of our predictions here, including a deeper dive on the electronic recordkeeping rule.](#)

What Should You Do?

It is important to note that, while the directive does not change any existing OSHA rules or regulations, it is an invaluable resource for safety professionals and organizations. Moreover, even though we predict that the rule will be scrapped or watered down, you need to comply with all of its requirements until that happens.

✓ Employers with 11 or more employees during the 2024 calendar year must post their form 300A from February 1, 2025 to May 1, 2025, unless they are in a specifically exempt industry.

✓ The 300A must be posted somewhere employees would see it often, like a break room or bulletin board. Employers are only required to post the 300A summary form, not the entire packet, which includes forms 300 and 301.

✓ Employers must also be prepared to electronically submit their records, if required, by March 2, 2025.

Conclusion

We will continue to monitor updates to OSHA regulations, along with other workplace safety topics, as we receive additional updates about President-elect Trump's transition plans. If you have any questions, contact the authors of this Insight, your Fisher Phillips attorney, or any member of our [Workplace Safety Practice Group](#) or [Government Relations Team](#). Visit our [New Administration Resource Center for Employers](#) to review all our thought leadership and practical resources, and make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on OSHA issues.