



Kentucky's Electronic Recordkeeping Rule Is In Effect!

Insights
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The December 1 compliance date for federal OSHA's new electronic recordkeeping portion of the new recordkeeping regulation is fast approaching. Known as "Improve Tracking of Workplace Injuries and Illnesses," the new federal OSHA rule will require certain employers with more than 20 employees to electronically submit injury records that will be posted on OSHA's website. These requirements were previously set to begin in July 2017, but have since been delayed to December 1, 2017 in order to allow OSHA "the opportunity to further review and consider the rule." (Federal OSHA said in an October 10, 2017 court filing that it has completed a draft rule revising the reporting rule. So, more changes are likely coming.) OSHA's website portal became available on August 1, 2017. Employers operating in OSHA State Plan states should be aware, however, that certain states, such as the Commonwealth of Kentucky, are not following the federal standard.

States that have their own OSHA plan, such as Kentucky, are required to have OSHA programs that are at least as effective as federal OSHA, and are consequently required to adopt and implement new federal standards, or a more stringent standard, within six (6) months of the adoption or amendment by federal OSHA. As previously reported in the July 2016 article, "[Kentucky Adopts Federal OSHA Recordkeeping Changes](#)", the Kentucky Labor Cabinet's Department of Workplace Standards, Division of Occupational Safety and Health adopted federal OSHA's requirement to submit injury and illness reports electronically.

Kentucky OSHA's electronic recordkeeping rule went into effect on January 1, 2017. However, unlike federal OSHA, Kentucky OSHA's deadline for employers to submit their 2016 injury and illness information was technically on July 1, 2017, even though there was no federal OSHA portal in existence at that time. So, what to do now?

While we believe it is unlikely that Kentucky OSHA will take action against any employers until December 1, 2017, if then, Kentucky employers should become acquainted with Kentucky OSHA's electronic recordkeeping requirements. Here is what you need to know:

Employers Affected: Establishments with 250 or more employees that are currently required to keep OSHA injury and illness records, and establishments with 20-249 employees that are classified in certain industries with historically high rates of occupational injuries and illnesses. (Note that on January 1, 2016, specific Kentucky industry sectors were newly required to keep injury and illness records (insert Kentucky industry sectors)).

What to Report: Covered establishments with 250 or more employees must electronically submit information from OSHA Forms 300 (Log of Work-Related Injuries and Illnesses), 300A (Summary of Work-Related Injuries and Illnesses), and 301 (Injury and Illness Incident Report). Covered establishments with 20-249 employees must electronically submit information from OSHA Form 300A.

When to Report: In Kentucky, beginning on July 1, 2017, all covered establishments were required to begin submitting information from their completed 2016 Form 300A. In 2018, covered establishments with 250 or more employees must submit information from all completed 2017 forms (300A, 300, and 301) by July 1, 2018, and covered establishments with 20-249 employees must submit information from their completed 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, covered establishments must submit the information by March 2.

How: Go to OSHA's website portal, "Launch ITA" to provide your 2016 OSHA Form 300A information.

Again, it is highly unlikely that Kentucky OSHA will take action against any employers not yet submitting their 2016 injury and illness information. Moving forward, however, employers in State Plan states should keep in mind that certain states, like Kentucky, may or may not adopt federal standards or policy deadlines. Therefore, the best practice is to contact your state's Occupational Safety and Health Program to determine if the state program comports with federal standards and policies, or reach out to your Fisher Phillips attorney.

As a reminder, the anti-retaliation provisions of the new regulation became effective on December 1, 2016 for federal OSHA, and became effective in Kentucky on January 1, 2017.

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