



# OSHA Issues Guidance on How to Cite Employers That Failed to Electronically Submit Injury and Illness Information

Insights

2.23.18

On February 21, the Occupational Safety and Health Administration (OSHA) issued new interim enforcement procedures, provided below, regarding failure to submit electronic injury and illness records.

In 2016, OSHA adopted a new rule (effective January 1, 2017) to require certain employers to electronically submit injury and illness information—including that found on the OSHA Form 300A Summary of Work-Related Injuries and Illnesses and OSHA Form 300 Log of Work-Related Injuries and Illnesses—directly to OSHA over the next several years. Under the rule, employers were required to submit their OSHA 300A forms for 2016 to OSHA by December 15, 2017, although OSHA accepted submissions until December 31, 2017.

Under the February 21 interim guidance, OSHA states that employers “that were required to submit records and failed to do so may be subject to citation.” Specifically, OSHA states that under most circumstances that the citations would be classified as Other than Serious with \$0 penalty.

Additionally, OSHA provides a couple of ways to avoid these citations or penalties in the interim guidance. First, employers who attempted to comply with the electronic submission requirements but were not able to do so for technical reasons may be able to avoid a citation if they can show this through documented communications with OSHA. Second, if an employer did not submit the records electronically but provides a paper copy during the inspection, OSHA will cite the employer for an Other than Serious citation but will not assess a penalty. Similarly, if an employer did not submit the 2016 records but shows that it has already submitted its 2017 records, OSHA will cite the employer for an Other than Serious citation but will not assess a penalty.

This is the first known guidance OSHA has issued regarding enforcement of this new rule. We will keep you updated as this matter progresses.

SUBJECT: Interim Enforcement Procedures for Failure to  
Submit Electronic Illness and Injury Records under  
29 CFR 1904.41(a)(1) and (a)(2)

This memorandum addresses potential violations of the Occupational Safety and Health Administration's (OSHA's) rule requiring electronic submittal of injury and illness records, 29 CFR 1904.41(a)(1) and (a)(2). Employers subject to the rule's submission requirements<sup>1</sup> had until December 15, 2017, to submit their 2016 records, although OSHA accepted submissions until December 31, 2017, at which time the Injury Tracking Application (ITA) was no longer available for submittal of CY2016 data. Those employers that were required to submit records and failed to do so may be subject to citation. In accordance with agency policy for recordkeeping related violations, failure to submit records would be classified as an Other Than Serious violation.

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<sup>1</sup> Only a small fraction of establishments are required to electronically submit their Form 300A data to OSHA. Remember, these criteria apply at the establishment level, not to the firm as a whole:

- Establishments with 250 or more employees that are subject to OSHA's recordkeeping regulation must electronically submit to OSHA the Summary of Work-Related Injuries and Illnesses (OSHA Form 300A)
- Establishments with 20-249 employees in certain high-risk industries must electronically submit to

OSHA some of the information from the Summary of Work-Related Injuries and Illnesses (OSHA Form 300A).

- Establishments with fewer than 20 employees at all times during the year do not have to routinely submit information electronically to OSHA.

The Directorate of Technical Support and Emergency Management (DTSEM) will provide the Area Offices access to the ITA database containing the submitted Form 300As. CSHOs should refer to this database during all inspections in order to identify employers that were required to submit records but failed to do so.

If an employer subject to the rule says that it attempted to submit its records electronically but was unable to do so, it must verify this with documentation, such as e-mail correspondence with the OSHA Help Desk, an OSHA National, Regional, or Area Office, or by using other OSHA contact means (such as e-correspondence). If such proof is provided, the CSHO shall collect the injury and illness records, and OSHA will not cite the employer for failing to submit.

If the employer was required to submit the data and did not attempt to do so, the Area Director shall issue a citation using the following guidance:

- If the employer failed to submit, but immediately abates during the inspection by providing a paper copy of the records, an Other Than Serious citation will be issued with no penalty.
- If the employer failed to submit its CY2016 data, but shows it has already submitted its CY2017 data, an Other Than Serious citation will be issued with no penalty.
- If the employer does not produce the records, an Other Than Serious citation will be issued with the appropriate penalty.

Area Directors may also direct CSHOs to perform a full recordkeeping audit where there is evidence of potential systemic recordkeeping issues.

The CSHO will enter the Form 300A data into the OIS. The CSHO will enter optional code **N-05- ITA Nonresponder** to indicate that the facility did not provide its 2016 Form 300A data through the ITA. This will give the National Office the ability to extract the data from the OIS and append it to the ITA database.

Illness and injury records play a crucial role in OSHA's ability to effectively target workplaces where employees are exposed to serious hazards. Therefore, the Agency will work to ensure full compliance with this regulation. In addition to this policy, OSHA is developing an analytic approach to identify non-responders to the CY 2016 data collection process.

The six month date to issue a citation for non-compliance with the requirements of 29 CFR 1904.41 will be June 15, 2018. A separate memo regarding guidance for State Plans will be forthcoming.

Please direct any questions regarding enforcement to the Directorate of Enforcement Programs, Office of General Industry and Agricultural Enforcement at 202-693-1850. Questions regarding record submittal procedures or submittal status of affected employers should be directed to the Directorate of Technical Support and Emergency Management, Office of Evaluations at 202-693-2400.

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