



State Plans Must Abide: Fed-OSHA Fixes Alleged “Error” and Mandates Electronic Reporting of Injuries and Illnesses in All State Plan States

Insights

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On April 30, the Occupational Safety and Health Administration (Fed-OSHA) reversed course and issued a [press release](#) announcing that employers in all state-plan states must implement Fed-OSHA’s new electronic recordkeeping and reporting rule.

In 2016, Fed-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.

Since Fed-OSHA issued this rule, state-plan states had been free to adopt or not adopt his rule as they chose. Many states, including North Carolina and South Carolina, chose not to adopt the rule.

Effective April 30, however, Fed-OSHA changed course. In its press release, Fed-OSHA argues that its initial guidance to states with state plans that they were free not to adopt the electronic reporting requirements was an “error.” Fed-OSHA now asserts that employers in state-plan states must conduct electronic reporting as if they were in a state under Federal OSHA. According to the press release, this change will not apply retroactively for 2016, but employers in state plan states that had not adopted the rule must submit Form 300A for Calendar Year 2017 by July 1, 2018.

Fed-OSHA’s action represents a slippery slope: if Fed-OSHA can compel states to adopt its electronic reporting rule, can it require states to adopt its other rules as well? For example, will state plans be forced to increase the maximum penalty amounts for violations, as Fed-OSHA did in 2016?

Additionally, it is unclear how or if Fed-OSHA will enforce this change in policy if a state chooses to ignore it. Fed-OSHA, of course, cannot issue citations to employers in state-plan states.

What should affected employers do? As of now, employers have until July 1, 2018 to submit their Form 300A. Employers should adopt a wait and see approach to see what course of action the state

in which they operate adopts (or if any such action is permissible under Fed-OSHA's new guidance). We will keep you posted on any developments.

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