



What's Up with OSHA's New Electronic Recordkeeping Requirements?

Insights

7.28.18

If you go to [OSHA's Electronic Recordkeeping page](#), and hit the Electronic Submission section, you'll be greeted with this message:

Electronic Submission of Injury and Illness Records to OSHA

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ANNOUNCEMENTS

Under the current recordkeeping rule, the initial deadline for electronic submission of information from OSHA Forms 300 and 301 by covered establishments with 250 or more employees was July 1, 2018. However, OSHA has announced its intent to issue a proposal to amend its recordkeeping regulation to remove the requirement to electronically submit to OSHA information from the OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) for establishments with 250 or more employees which are required to routinely keep injury and illness records. OSHA will not enforce this deadline for these two forms without further notice while this rulemaking is underway.

*Employers can continue to electronically report their Calendar Year (CY) 2017 Form 300A data to OSHA, but submissions after July 1, 2018 will be flagged as "Late". **Remember, not all establishments are covered by this requirement.** To review which establishments need to provide their 2017 data, [click here](#).*

Put simply, OSHA has suspended the July 1 requirement that covered Employers must submit the detailed OSHA Form 300 detailing all 2017 recordable injuries, and the individual Form 301 (First Report of Injury) for all recordable 2017 injuries. Covered employers must still submit the Form 300A, the less detailed summary of the 2017 injury data.

OSHA took this step in anticipation of releasing a Notice of Proposed Rulemaking to change the Electronic reporting regulation, which it released on July 27. ([LINK to the 47 page scintillating RIN: 1218-AD17.](#))

Purpose of the Proposed Change.

The purpose of the proposed change is to eliminate the requirement that establishments with 250 or more employees to electronically submit the Forms 300 and 301, which admittedly is a burdensome task for employers with establishments of any meaningful size.

What the Proposed Rulemaking Would Not Change.

Many employer associations were irked that the Proposed Changes do not address the Obama Administration OSHA's position against most safety-based Incentive Programs, and the ill-thought-out attack on automatic post-accident drug testing.

What about Court Challenges?

Both the original Electronic Rule and the trump Administration OSHA's position on the Rule have generated abundant work for attorneys on both sides of the debate.

Two Federal District Court challenges filed by almost ten employer groups have been on hold for the past year, waiting for OSHA to announce proposed rule changes. Bloomberg BNA reported that as of July 27, it was not clear how the litigants would react. See, *TEXO ABC/AGC v. Perez*.

More interestingly, Public Citizen Health Research Group and two other health advocacy groups filed a lawsuit on July 25, 2018 seeking to compel the current OSHA to comply with the current Rule. The suit contended that merely publishing a Notice on its website that it plans Rulemaking did not justify refraining from following the current rule. The suit contended that OSHA must go through the formal Rulemaking process. This suit was filed before the Administration released its actual Notice, but Public Citizen asserts that formally issuing proposed rule changes does not affect its lawsuit seeking enforcement of the existing rule.

[Link to Lawsuit.](#) [Link to Public Citizen Press release.](#)

Public Citizen first sued the Administration in January 2018 arguing that OSHA illegally withheld submitted workplace injury records from public after Public Citizen's multiple 2017 FOIA Requests for data. The group asserted that OSHA identified more than 23,000 applicable records in response to the nonprofit group's October and November FOIA requests but claimed they were exempt from FOIA because their release *would "disclose OSHA's techniques and procedures for law enforcement investigation."* Public Citizen responded in part that the records were not exempt from FOIA because they were not compiled for law enforcement purposes and that release of the records wouldn't disclose techniques and procedures for law enforcement investigations or prosecutions, according to court documents. [Link to January 2018 Complaint Seeking Injunction.](#)

Employer Takeaways.

1. Employers and others have 60 days from the Notice's release to submit comments. By all means, do so, and hopefully employers and their counsel will also focus on the failure to address the attacks on post-accident drug testing.

2. In anticipation of submission of Form 300 and 301s, many employers found problems with their records including over and under reporting and many citable technical errors. Continue improving and cleaning up Recordkeeping.
3. Stay abreast of the various legal challenges which could change the equation.

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