

OSHA ANNOUNCES FINAL RULE ON RECORDKEEPING DRAMATICALLY INCREASES EMPLOYERS' REPORTING REQUIREMENTS WHICH OSHA WILL MAKE PUBLIC

Insights
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On September 18, 2014, OSHA published its final rule for Occupational Injury and Illness Recording and Reporting Requirements. The rule, which takes effect on January 1, 2015, makes several important changes that significantly expands reporting requirements for all employers while publishing the employer provided information on the OSHA website.

First, the new reporting requirements expand the list of severe injuries that employers must report. Currently, employers must notify OSHA of all work-related fatalities and work-related hospitalizations of three or more employees within eight hours of the incident. Under the new rule, employers will be required to report all work-related fatalities, in addition to the following: 1) all work-related inpatient hospitalizations of one or more employees; 2) all work-related amputations; and 3) all work-related losses of an eye.

The new rule retains the requirement for reporting all work-related fatalities within eight hours of an incident, but it imposes a 24-hour reporting window for work-related inpatient hospitalizations, amputations, and losses of an eye. All employers are subject to these reporting requirements, even those employers who are otherwise exempt from routinely keeping OSHA 300 Logs.

You can report these incidents to OSHA over the phone by calling the local OSHA Area Office site or the 24-hour OSHA hotline or, alternatively, electronically on OSHA's public

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website. Additional information is available on OSHA's webpage: <https://www.osha.gov/recordkeeping2014/>.

The new recordkeeping rule also updates the list of industries that are partially exempt from OSHA recordkeeping requirements. Under the current regulations, two classes of employers are partially exempt from routinely keeping records of serious employee injuries and illnesses, including employers with 10 or fewer employees and employers in certain low-hazard industries, as classified by the Standard Industrial Classification (SIC) system.

The new rule retains the exemption for employers with 10 or fewer employees, but it relies on the North American Industry Classification System (NAICS) to categorize an industry as low hazard. As a result, employers in 25 industries previously exempt, who now do not fit within the new NAICS list of exempt industries must now comply with all OSHA's recordkeeping requirements.

Conversely, employers in a small number of industries who previously had to comply with the recordkeeping requirements will now be exempted under the new NAICS exemption list. A list of the industries previously exempt that now will be required to keep OSHA injury and illness records can be found at https://www.osha.gov/recordkeeping2014/reporting_industries.html. For step-by-step instructions to determine whether your company is categorized as an exempt industry under the new rule, visit <https://www.osha.gov/recordkeeping2014/OSHA3746.pdf>.

In a surprise move, OSHA's Assistant Secretary, Dr. David Michaels, announced that the fatality and injury reports will be posted online on the OSHA website. Online posting was not mentioned by OSHA during the three year-long rulemaking process. Michaels indicated that publishing severe injury and illness reports on the OSHA website was in part to publicly shame or "nudge" employers to take steps to prevent injuries so they are not seen as unsafe places to work.

OSHA intends for its new rule to have far-reaching implications to address concerns about serious hazards in the workplace. In the press statement accompanying the release of the final rule, OSHA representatives stated that OSHA would not send inspectors to investigate every reported incident, but it will question the employer about the

cause of the injury and the steps the employer plans to take to prevent future injuries.

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