

OSHA GREATLY INCREASES WORKPLACE INJURY REPORTING REQUIREMENTS

Insights

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The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) issued a final rule on May 11, 2016 that greatly enhances injury and illness data collection from employers. The new rule will require many employers to electronically submit information about workplace injuries and illnesses to the government, and OSHA has announced it intends to post this data on its public website.

Details Of Finalized Rule: Who, What, And When

Under the final rule, OSHA has revised its requirements for recording and submitting records of work-based injuries and illnesses. Once the new rule takes effect, you will be required to electronically submit the recorded information for posting on the OSHA website. Establishments with 250 or more employees that are currently required to keep OSHA injury and illness records must electronically submit information from the OSHA 300 Logs, the 300A Summaries, and the 301 Injury and Illness Incident Reports to the agency.

For these establishments, there will be a phase-in where only the 300A Summaries for 2016 will be required to be electronically submitted by July 1, 2017. Meanwhile, the OSHA Forms 300A, 300, and 301s for 2017 will all be required to be submitted by July 1, 2018.

This new rule will also cover those establishments with 20 to 249 employees that are classified in 67 specific industries which have historically high rates of occupational injury and illness. These businesses must also electronically submit information from their 2016 OSHA 300A Summaries to OSHA by July 1, 2017. Beginning in 2019, the submission

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deadline will be changed from July 1 to March 2 for the previous year.

The final rule also allows OSHA to collect information from employers that are not required to submit information to the agency on a routine basis. These employers would only be required to submit the data requested upon written notification from OSHA.

Anti-Retaliation Protections

Under the new rule, OSHA reemphasizes the requirements of the whistleblower protections found in Section 11c of the federal law for employees to report injury and illnesses without fear of retaliation. The final rule contains three provisions to highlight the retaliation protection.

Specifically, you must inform employees of their right to report work-related injuries and illnesses free from retaliation. OSHA has stated that you may meet this obligation by posting the "Job Safety and Health – It's the Law" Workers' Right Poster from April 2015.

Second, your procedures for reporting work-related injuries and illnesses must be reasonable and must not deter or discourage employees from reporting. Finally, you may not retaliate against employees for reporting work-related injuries or illnesses.

Under this expanded retaliation provision, arguably, you can now be specifically cited for retaliation under the recordkeeping standard and, at the same time, your employees can file Section 11c retaliation complaints. If so, this greatly enhances the potential liability against you for any discipline issued for violation of safety rules.

Public Posting Of Information Causes Concern

As noted above, OSHA will post the establishment's specific injury and illness data it collects under this final recordkeeping rule on its public website (www.OSHA.gov). OSHA has stated that it will remove any personally identified information (PII) before the data is released to the public.

While the agency believes that public access to this very large set of workplace injury occurrences will provide public health researchers with an unprecedented opportunity to advance the field of injury and illness causation and prevention research, it also opens the door for unprecedented opportunities for significant OSHA citations

and penalties, as well as negative consequences from other third parties utilizing this data.

The agency also claims that this new recordkeeping reporting requirement will help you and your employees to identify hazards, fix problems, and prevent additional injuries and illnesses. However, the business community has expressed its concerns about a number of unintended negative consequences that could result from this revision of the recordkeeping standard throughout the rulemaking process.

Specifically, the business community believes that this new requirement will force companies to publicly reveal confidential business details which had in the past been considered privileged and confidential. It will also give undo access to business processes to competitors, plaintiffs' lawyers, community activists, and union organizers for use against the company. Finally, there is serious concern that the new rule places an excessive burden on employers while lacking statutory authority.

If you have any questions about this new rule, or how it may affect your business, please contact your Fisher Phillips attorney or any member of our Workplace Safety and Catastrophe Management Practice Group at 404.231.1400.

This Legal Alert provides an overview of an agency rule. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.