

OSHA's New Recordkeeping Rule Impacts the Healthcare Industry

By [Matthew Deffebach](#) and [Punam Kaji](#)

On May 11, 2016, the Occupational Safety and Health Administration (“**OSHA**”) issued a final rule, which is slated to go into effect January 1, 2017. As a result of the new rule, certain employers must electronically submit to an OSHA website the injury and illness data contained in their various OSHA logs. This information will become publicly available on the OSHA website. The new rule specifically targets the healthcare industry. As explained in the chart below, the new rule applies to two categories of employers: (1) employers with 250 or more employees, and (2) employers with 20 to 249 employees in specific “high-risk industries” listed in Appendix A. **Many healthcare industries are specifically named in Appendix A.** [View the full list of Appendix A.](#)

Healthcare industries and corresponding NAICS code impacted by the rule:

- Ambulatory healthcare services (6219);
- General medical and surgical hospitals (6221);
- Psychiatric and substance abuse hospitals (6222);
- Specialty (except psychiatric and substance abuse) hospitals (6223);
- Nursing care facilities (6231);
- Residential mental retardation, mental health, and substance abuse facilities (6232);
- Community care facilities for the elderly (6233); and
- Other residential care facilities (6239).

The following chart further describes the rule's requirements.

	Employers with 250 or more employees (at any time during the previous calendar year)	Employers with 20 to 249 employees (at any time during the previous calendar year) and classified on an industry list (App. A) to the revised regulations
Annual Electronic Submission Requirement	Must electronically submit the information from 300A (Summary of Work-Related Injuries and Illnesses), 300 (Log of Work-Related Injuries and Illnesses), and 301 (Injury and Illness Incident Report)	Must electronically submit the information from 300A (Summary of Work-Related Injuries and Illnesses)
What information must be submitted?	Everything on the 300A, 300, and 301 except for: <u>From the OSHA Form 300</u>	Everything on the 300A

	<ul style="list-style-type: none"> Employee Name (Column B) from 300. <p><u>From the OSHA Form 301</u></p> <ul style="list-style-type: none"> Employee Name (Field 1); Employee Address (Field 2); Name of Physician (Field 6); Facility Name and Address where obtained treatment (Field 7). 	
Where is the information submitted?	According to OSHA, it will provide a secured website for the electronic submission.	According to OSHA, it will provide a secured website for the electronic submission.
When must information be submitted?	For the first two years (namely, 2017 and 2018), by July 1 st . Thereafter, by March 2 nd .	For the first two years (namely, 2017 and 2018), by July 1 st . Thereafter, by March 2 nd .

If an employer is not included in the two categories above, does it have to submit injury and illness data electronically? No, unless an employer receives a notification from OSHA that the employer must submit the data. This is similar to the regime that existed before this change where employers would only submit data if they received OSHA’s annual survey form.

If an employer currently is exempted from keeping 300, 301, or 300A logs, does this change anything? No; if already exempted under Section 1904.1 or 1904.2 of the recordkeeping regulations, an employer only submits data if requested by OSHA to do so.

What will OSHA do with the data? OSHA intends to post the establishment-specific injury and illness data it collects under this final rule on its website. The publication of specific data fields will be in part restricted by applicable federal law, including the Freedom of Information Act, as well as specific provisions within part 1904 of the existing regulations. OSHA does not intend to post any information online that could be used to identify individual employees.

What is the new employee access rule? Previously, employers were required to provide “limited” access to injury and illness records to their employees and their representatives. The revised regulation removes the word “limited.”

What are the new rules regarding encouraging the reporting of work-related injuries and illnesses? Employers previously had to inform employees on how to report injuries and illnesses, but now they must also ensure that the procedure for doing so is “reasonable.” According to OSHA, a procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness.

What additional notice requirements are imposed on employers? In addition to being advised as to the procedures for reporting work-related injuries and illnesses, employers must also specifically inform employees that: (i) employees have the right to report work-related injuries and illnesses; and (ii) employers are prohibited

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from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses.