

OSHA's New Recordkeeping Rule

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PRACTICES Labor and Employment, OSHA

On May 11, 2016, OSHA issued a final rule, which is slated to go into effect January 1, 2017. This requires certain employers to electronically submit information regarding workplace injuries and illnesses. As with any new rule-making by OSHA, presumably legal challenges to the rule are on the way. Nonetheless, here are the relevant new provisions.

What is Changing?

Starting in 2017, certain employer establishments must electronically submit to an OSHA website the injury and illness data contained in their various OSHA logs. This table summarizes the requirements for the two types of employers covered by the new provisions.

	Employers with more than 250 employees (at any time during the previous calendar year)	Employers with 20 or more employees but less than 250 (at any time during the previous calendar year) and classified on an industry list (appendix 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?	<p>Everything on the 300A, 300, and 301 except for:</p> <p>From the OSHA Form 300</p> <ul style="list-style-type: none"> Employee Name (Column B) from 300. <p>From the OSHA Form 301</p> <ul style="list-style-type: none"> Employee Name (Field 1); Employee Address (Field 2); Name of Physician (Field 6); 	Everything on the 300A.

	<ul style="list-style-type: none"> • 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 1st. Thereafter, by March 2nd.	For the first two years, namely, 2017 and 2018, by July 1st. Thereafter, by March 2nd.

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.

For employers with 20 to 250 employees who only submit the 300A data if on a new appendix list, what are some of the examples of covered industries on that appendix A list?

Construction, manufacturing, home furnishing stores, lawn and garden equipment and supplies stores, grocery stores, department stores, general freight trucking, warehousing and storage, waste collection, general medical and surgical hospitals, dry-cleaning and laundry services, and several others.

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, www.osha.gov. The publication of specific data fields will be in part restricted by applicable federal law, including the Freedom of Information Act (FOIA), 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) they have the right to report work-related injuries and illnesses; and (ii) employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses.

For more information, please contact the Haynes Boone lawyer with whom you work or any of the following attorneys in the firm’s [OSHA and Workplace Disasters](#) Practice Group: