

OSHA's Interim Guidance on Citing Employers that Failed to Electronically Submit Injury and Illness Records

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According to a rule that became effective on January 1, 2017, OSHA requires certain employers to electronically submit injury and illness records directly to OSHA over the next several years. The information required to be electronically submitted includes that on OSHA Form 300 Log of Work-Related Injuries and Illnesses and OSHA Form 300A Summary of Work-Related Injuries and Illnesses. See 29 C.F.R. § 1904.41(a)(1)-(2).

Under the rule, employers were required to submit their OSHA 300A forms for 2016 to OSHA by December 15, 2017, although OSHA's website for electronic submission accepted injury and illness records submissions until December 31, 2017.

On February 21, 2018, OSHA issued Interim Enforcement Procedures for Failure to Submit Electronic Illness and Injury Records under 29 C.F.R. Sections 1904.41(a)(1)-(2). In this publication, OSHA provided guidance for citing employers that were required to electronically submit the injury and illness records but failed to do so. OSHA has instructed that failure to submit records should be classified as Other than Serious. In addition, under the interim guidance, area directors may direct their compliance officers to perform a full recordkeeping audit where there is evidence of potential systematic recordkeeping issues.

Employers may be able to avoid a citation and/or penalty during the interim guidance period if they fall into one or more of the following categories:

- If the employer attempted to electronically submit the information, but was unable to do so due to technical issues, employer may avoid being cited if the employer can show documentation of its attempts to submit the information.
- If the employer failed to submit, but immediately abates during the inspection by providing a paper copy of the records, an Other Than Serious citation will be issued with no penalty.
- If the employer failed to submit its CY2016 data, but shows it has already submitted CY2017 data, an Other Than Serious citation will be issued with no penalty.

The six-month date to issue a citation for non-compliance with the requirements of 29 C.F.R. Section 1904.41 is June 15, 2018. OSHA is expected to provide separate guidance for the State Plans.