

OSHA Issued Final Rule on Recordkeeping

April 12, 2019 Matthew Deffebach

PRACTICES OSHA, Labor and Employment

OSHA issued a final rule rescinding portions of the Obama Administration electronic reporting rule. Effective February 25, 2019, employers with 250 or more employees are only required to electronically submit the OSHA Form 300A (Summary of Work-Related Injuries and Illnesses), instead of submitting the OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report). OSHA determined that the new rule would better protect employee privacy by eliminating the risk that sensitive information, including descriptions of workers' injuries and body parts affected, would be publicly disclosed pursuant to a Freedom of Information Act request.

The final rule does not impact an employer's duty to retain physical copies of the Form 300 and Form 301 on-site. OSHA will continue to obtain the Form 300 and 301 in connection with investigations.

Three public health advocacy groups—Public Citizen's Health Research Group, the American Public Health Association, and the Council of State and Territorial Epidemiologists—have twice filed joint suits against OSHA regarding the final rule. In their first lawsuit, filed June 25, 2018, the groups assert that OSHA violated the Administrative Procedure Act's notice-and-comment requirement by posting on its website that it would no longer require submissions of the Form 300 and 301 in May 2018. OSHA subsequently issued a proposed rule relating to the May 2018 posting on July 30, 2018. OSHA filed a motion to dismiss the first lawsuit, and the motion was denied on December 12, 2018.

The groups' second lawsuit was filed January 29, 2019. That suit contends that OSHA did not provide a reasoned explanation for the change; did not adequately consider comments submitted in opposition to the rule change; and relied on considerations that do not have a basis in law.

The pending lawsuits did not impact the due date for Form 300A submissions for the 2018 Calendar Year, which was March 2, 2019.