

# OSHA's Electronic Record-Keeping Compliance Deadline Delayed Indefinitely

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**PRACTICES** Labor and Employment, OSHA

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OSHA announced that it has delayed the much-anticipated July 1, 2017, compliance deadline for employers to electronically submit form 300A injury and illness data. OSHA has not provided a new compliance deadline, thus, leaving the delay open-ended.

In 2016, OSHA published a final rule to improve the electronic tracking of workplace injuries and illnesses. 81 Fed. Reg. 29624 (May 12, 2016). The rule contains three new employee involvement provisions addressing employer conduct that could discourage employees from reporting work-related injuries or illnesses. 29 C.F.R. § 1904.35. In section 1904.35(b)(1)(i), the new rule clarifies the existing implicit requirement that an employer's reporting procedure for work-related injuries and illnesses be reasonable; that is, that the employer's procedure not deter or discourage reasonable employees from reporting work-related injuries or illnesses. Additionally, the new rule incorporates the existing statutory prohibition, under section 11(c) of the OSH Act, 29 U.S.C. § 660(c), on retaliating against employees for reporting work-related injuries or illnesses. 29 C.F.R. § 1904.35(b)(1)(iv). Further, the rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation. 29 C.F.R. § 1904.35(B)(1)(ii)-(iii). Lastly, the rule required employers to upload injury and illness data from the 300A logs to a public website by July 1, 2017, which has not been delayed indefinitely.

Opponents of the rule brought an action in the Northern District of Texas challenging the legality of the rule. *TEXO ABC/AGC, Inc. v. Perez*, No. 3:16-cv-01998 (N.D. Tex. filed July 8, 2016). The suit seeks a declaratory judgment that the rule, which prevents and/or restricts certain incident-based employer safety initiatives and programs that require drug testing after a workplace accident, exceeds the scope of statutory authority granted to OSHA. Another case challenging the same regulation has been filed in Oklahoma federal court and asserts that the rule is an unconstitutional violation of the regulated employers' First and Fifth Amendment rights and beyond the scope of OSHA's statutory authority. *Nat'l Assoc. of Home Builders of the United States v. Perez*, No. 5:17-cv-00009 (W.D. Okla. Jan. 4, 2017). The Oklahoma case takes a broader position challenging the electronic uploading part of the rule. Unions and public interest groups are seeking to intervene in the lawsuits to advocate for the rule. The courts have entered briefing schedules for later this summer.