

UPDATES TO OSHA'S RECORDKEEPING RULE

Summary:

The Occupational Safety and Health Administration (OSHA) has updated its recordkeeping rule by making two key changes. First, the rule updates the list of industries that are exempt from the requirement to routinely keep OSHA injury and illness records due to relatively low occupational injury and illness rates. The previous list of industries was based on the old Standard Industrial Classification (SIC) system and injury and illness data from the Bureau of Labor Statistics (BLS) from 1996, 1997 and 1998. The new list of industries that are exempt from routinely keeping OSHA injury and illness records is based on the North American Industry Classification System (NAICS) and use injury and illness BLS data from 2007, 2008 and 2009. Secondly, the rule expands the list of severe work-related injuries that all covered employers must report to OSHA. Companies must comply with these new requirements by January 1, 2015.

Background:

OSHA regulations require employers with more than 10 employees in most industries to keep records of occupational injuries and illnesses at their establishments. Employers covered by these rules must record each recordable employee injury and illness on an OSHA Form 300 ("Log of Work-Related Injuries and Illnesses"). Employers must also prepare a supplementary OSHA Form 301 ("Injury and Illness Incident Report") that provides additional details about each case recorded on the 300 log. Finally, at the end of each year, employers are required to prepare a summary report of all injury and illnesses on the OSHA Form 300A ("Summary of Work-Related Injuries and Illnesses") and post the form in a visible location in the workplace.

OSHA has required employers to report work-related fatalities and certain work-related hospitalizations since 1971, the year the OSH Act went into effect. The initial regulation required employers to report, within 48 hours, an employment incident resulting in the fatality of one or more employees or the hospitalization of five or more employees. Employers were required to report by telephone or telegraph to the nearest OSHA office. In 1994, the Agency revised the regulation to require reporting, within eight hours, of any work-related fatality or hospitalization of three or more employees. The change was made from 48 hours to eight hours to enable OSHA to inspect the site of the incident and interview personnel while their recollections are more immediate, fresh and untainted by other events. These 1994 requirements have remained substantially unchanged since then.

Partially Exempt Employers Provisions in Final Rule:

Certain employers are partially exempt from routinely keeping records. First, employers with ten or fewer employees at all times during the previous calendar year are exempt from routinely keeping OSHA injury and illness records. Second, establishments from certain low-hazard industries that have 75% or less three-year averages for occupational injuries and illnesses records than private industry are also exempt from routinely keeping OSHA injury and illness records. Since 1982, this list has been comprised of establishments in the divisions of retail trade, finance, insurance and real estate. These industries will

now be classified by NAICS instead of SIC, and the data to be used will be from 2007, 2008 and 2009 instead of 1978, 1979 and 1980.

Revised Reporting Requirements:

Previously OSHA's regulations required an employer to report only work-related fatalities and in-patient hospitalizations of three or more employees. Reporting single hospitalizations, amputations or loss of an eye was not required under the previous rule. Now employers will have to report the following events to OSHA:

- All work-related fatalities within 8 hours of finding out about it
- All work-related in-patient hospitalizations of one or more employees within 24 hours of learning about them
- All work-related amputations within 24 hours of learning about them
- All work-related losses of an eye within 24 hours of learning about them

Employers will have three options for reporting the event:

- By telephone to the nearest OSHA Area Office during normal business hours
- By telephone to the 24-hour OSHA hotline
- OSHA is developing a web portal for employers to report incidents electronically

Employers reporting any of these incidents will be required to report the following information:

- Establishment name
- Location of the work-related incident
- Time of the work-related incident
- Type of reportable event (i.e., fatality, amputation, etc.)
- Number of employees who suffered then event
- Names of employees who suffered the event
- Contact person and his or her phone number
- Brief description of the work-related incident

Electronic Reports Available to the Public:

One other provision in the OSHA Recordkeeping and Reporting changes (a related, but separate rule) is that employers would be required to submit their injury and illness information electronically and that

these reports would be available to the public online. During the process of drafting this Recordkeeping rule, OSHA conducted a public meeting during which several stakeholders expressed concern that the proposal could promote the adoption of workplace policies and procedures that deter or discourage employees from reporting work-related injuries and illnesses. This has led the Agency to issue a Supplemental Notice of Proposed Rulemaking concerning employers' responsibilities about reporting.

OSHA is considering adding provisions to the regulations that will make it a violation for an employer to discourage employee reporting. OSHA is also considering requiring that employers inform their employees of their right to report injuries and illnesses; require that any injury and illness reporting requirements established by the employer be reasonable and not unduly burdensome; and prohibit employers from taking adverse action against employees for reporting injuries and illnesses. These adverse actions could include termination, reduction in pay, reassignment to a less desirable position or any other action that might dissuade a reasonable employee from reporting an injury.

More Information:

To read the final Recordkeeping and Recording rule, follow this link: <http://www.gpo.gov/fdsys/pkg/FR-2014-09-18/html/2014-21514.htm>. To read the Supplemental Notice of Proposed Rulemaking, follow this link:

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=24659.

There are also very helpful Fact Sheets and other compliance materials on the OSHA webpage. Go here for the home page (<https://www.osha.gov/recordkeeping2014/index.html>); here for a very useful summary fact sheet (<https://www.osha.gov/recordkeeping2014/OSHA3744.pdf>); here for frequently asked questions (<https://www.osha.gov/recordkeeping2014/reporting.html>); and finally here is a simply infographic outlining the differences between current OSHA reporting requirements and the new ones effective on January 1, 2015 (<http://www.safe-staff.com/free-safety-infographics/2014/10/20/oshas-new-incident-reporting-requirements-for-2015>)