



## **OSHA AMENDING RECORDKEEPING REQUIREMENTS**

The Occupational Safety and Health Administration (OSHA) is proposing to amend its recordkeeping regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation. The duty to record an injury or illness continues for as long as the employer must keep records of the recordable injury or illness; the duty does not expire just because the employer fails to create the necessary records when first required to do so.

Section 9(c) of the OSH Act contains a statute of limitations providing that no citation may be issued after the expiration of six months following the occurrence of any violation. Generally, OSH Act violations continue to occur for as long as employees are exposed to the hazard posed by the non-compliant workplace. Thus, employers have an ongoing obligation to correct conditions that violate OSHA standards and regulations, and under section (c), violations are subject to citations and penalties for up to six months after the last instance of employee exposure to the relevant hazard.

### ***Background***

OSHA's recordkeeping regulations require employers to record information about certain injuries and illnesses occurring in their workplaces, and to make that information available to employees, OSHA, and the Bureau of Labor Statistics (BLS). Employers must record work-related injuries and illnesses that meet one or more recording criteria, including injuries and illnesses resulting in death, loss of consciousness, days away from work, restricted work activity or job transfer, medical treatment beyond first aid, or a diagnosis of a significant injury or illness by a physician or other licensed health care professional.

Employers must document each recordable injury or illness on an "OSHA 300" form, which is a log of all work-related injuries and illnesses. Employers also must prepare a supplementary "OSHA 301 Incident Report" for each recordable injury or illness.

At the end of each calendar year, employers must review their 300 Logs to verify that the entries are complete and accurate. Employers must also correct any deficiencies identified during the annual review. By February 1 of each year, employers must create, certify and post annual summaries of the cases listed on their 300 Logs for the prior calendar year. Annual summaries must remain posted until April 30 of each year and employers must retain their OSHA Logs, Incident Reports and annual summaries for five years following the end of the calendar year that they cover. During the retention period, employers must update their 300 Logs to include newly discovered recordable cases and to show any changes in the classification, description or outcome of previously-recorded cases.

Accurate injury and illness records serve several important purposes. One purpose is to provide information to employers. The information in the OSHA-required records makes employers more aware of the kinds of injuries and illnesses occurring and the hazards that cause or contribute to them. When employers analyze and review the information in their records, they can identify and correct hazardous



workplace conditions. Additionally, injury and illness records are essential for employers to effectively manage their safety and health programs as these records permit employers to track injuries and illnesses over time so they can evaluate the effectiveness of protective measures implemented in response to identified hazards.

Employees can use the information to become better informed about, and more alert to, the hazards they face. Employees who are aware of the hazards around them may be more likely to follow safe work practices and to report workplace hazards to their employers.

Additionally, BLS uses data derived from employers' injury and illness records to develop national statistics on workplace injuries and illnesses. These statistics include information about the source, nature and type of the injuries and illnesses that are occurring in the nation's workplaces.

### ***OSHA's Position***

OSHA's longstanding position is that an employer's duty to record an injury or illness continues for the full duration of the record-retention-and-access period (five years after the end of the calendar year in which the injury or illness became recordable). This means that if an employer initially fails to record a recordable injury or illness, the employer still has an ongoing duty to record that case. The recording obligation does not expire simply because the employer failed to record the case when it was first required to do so. As long as an employer fails to comply with its ongoing duty to record an injury or illness, there is an ongoing violation of OSHA's recordkeeping requirements that continues to occur every day that employees work at the site. Therefore, OSHA can cite employers for such recordkeeping violations for up to six months after the five-year retention period expires without running afoul of the OSH Act's statute of limitations.

### ***Proposed Changes to the Requirements***

OSHA is proposing to amend its recordkeeping regulations to clarify that employers covered by the recordkeeping requirements have a continuing obligation to make and maintain accurate records of all recordable injuries and illnesses. This obligation continues for as long as the employer must maintain records for the year in which an injury or illness became recordable, and it does not expire if the employer fails to create a record when first required to do so.

The continuing obligation to make and maintain accurate records of work-related illnesses and injuries is in accord with longstanding OSHA policy. Thus, this proposal is not meant to impose new or additional obligations on employers. Employers will not be required to make records of any injuries or illnesses for which records are not currently required; nor are the recording requirements themselves changing.

Furthermore, the proposed changes clarify that employers must make and maintain accurate records for every recordable injury or illness on the OSHA 300 Log. This obligation continues through the five-year



record retention-and-access period. In addition, during that period, employers must update the Log by adding cases not previously recorded and by showing changes to previously recorded cases. The current version of the recording criteria require employers to “record” injuries and illnesses which is less explicit in expressing OSHA’s intent that employers both create and keep accurate records. The proposed language is intended to express that an employer’s duty includes both creating and preserving accurate records of recordable injuries and illnesses.

The proposal also clarifies that each and every recordable injury and illness must be recorded on both the OSHA 300 Log for the year and a Form 301 Incident Report within seven calendar days of when the employer gets information that the injury or illness occurred. Employers that miss this seven-day recording deadline are not excused from the recording obligations after the seven-day period expires.

Finally OSHA is proposing revisions to make clear that employers must examine each year’s OSHA 300 Log at the end of the year to ensure that each and every recordable injury and illness is recorded on the Log, and that each entry is accurate. If an employer discovers during this review that an injury or illness is missing or that any aspect of an entry is inaccurate, the employer must correct the deficiency.

To read the rule in its entirety, follow this link:

<https://www.federalregister.gov/articles/2015/07/29/2015-18003/clarification-of-employers-continuing-obligation-to-make-and-maintain-an-accurate-record-of-each>.

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