

October 2016**OSHA Finalizes Reporting and Recordkeeping Requirements Rule
Effective Dates: November 1, 2016 and January 1, 2017**

The Occupational Safety and Health Administration (OSHA) has issued its final rule on electronic tracking of workplace injuries and illnesses. The rule will revise OSHA requirements for recording and submitting records of workplace injuries and illnesses. Some of this recorded information will now be posted on the OSHA website. In addition, the final rule includes provisions that encourage workers to report work-related injuries and illnesses to their employers and prohibit employers from retaliating against workers for making those reports.

OSHA's aim in implementing this final rule is to help improve workplace safety through expanded access to timely, establishment-specific injury and illness information for OSHA, employers, employees, employee representatives, potential employees, customers, potential customers and public health researchers. In addition, the agency believes that public disclosure of the data will "nudge" employers to reduce work-related injuries and illnesses in order to demonstrate to investors, job seekers, customers and the broader public that their workplaces provide safe and healthy work environments for their employees.

Background

OSHA's 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 OSHA Form 300. Finally, at the end of each year, employers are required to prepare a summary report of all injuries 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.

Electronic Submissions Required

The final rule requires certain employers to electronically submit the injury and illness information they are already required to keep under existing OSHA regulations. The electronic submission requirements in this final rule do not add to or change any employer's obligation to complete and retain injury and illness records under OSHA's regulations.

This requirement applies to the following:

- Establishments with 250 or more employees that are currently required to keep OSHA injury and illness records must electronically submit information from OSHA Forms 300, 300A and 301.

- Establishments with 20-249 employees that are classified in certain industries with historically high rates of occupational injuries and illnesses must electronically submit information from OSHA Form 300A.

For the first year, the injury and illness recordkeeping Form 300A must be submitted by July 1 2017. The following year, employers are required to submit information from all 2017 forms (300A, 300 and 301) by July 1, 2018. Beginning in 2019, the submission deadline will be changed from July 1st to March 2nd.

Employers who are not required to submit records yearly may still be required to submit information upon OSHA's direction, OSHA intends to provide notification of these data collections through direct mailings, publication in the Federal Register, and publication on its website and other notices.

Employees' Right to Report Free from Retaliation

The rule also contains three provisions to promote complete and accurate reporting of work-related injuries and illnesses.

- Employers must inform employees of their right to report work-related injuries and illnesses free from retaliation.
- An employer's procedure for reporting work-related injuries and illnesses must be reasonable and must not deter or discourage employees from reporting.
- An employer may not retaliate against employees for reporting work-related injuries or illnesses.

By November 1, 2016, employers must establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. After establishing the procedure for reporting work-related injuries and illnesses, employers must inform each employee about it. An employer will need to be able to prove its employees received the information. Specifically, the employer must tell all employees: A) they have the right to report work-related injuries and illnesses; and B) a company is prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses.

Post-Incident Drug Testing

Through this rule, OSHA is also taking the position that a policy of mandatory drug testing after all incidents is considered a form of adverse action which could deter a worker from reporting. Additionally, OSHA asserts that in a case where drugs are clearly not a factor in an incident, it constitutes a violation of privacy.

However, it is not OSHA's intent to ban drug testing, but rather employers must restrict automatic drug testing to situations in which:

- There is a reasonable possibility that drug use by the reporting employee is likely to have been at least a contributing factor in the incident.
- The drug test can accurately identify worker impairment by drug use at the time of the incident.

To read the rule in its entirety, follow this link: <https://www.gpo.gov/fdsys/pkg/FR-2016-05-12/pdf/2016-10443.pdf>.

OSHA delays effective date for enforcing employees' rights to report workplace injuries, illnesses

WASHINGTON - The Occupational Safety and Health Administration is delaying enforcement of the anti-retaliation provisions in its new injury and illness tracking rule to conduct additional outreach and provide educational materials and guidance for employers. Originally scheduled to begin Aug. 10, 2016, enforcement will now begin Nov. 1, 2016.

Under the rule, employers are required to inform workers of their right to report work-related injuries and illnesses without fear of retaliation; implement procedures for reporting injuries and illnesses that are reasonable and do not deter workers from reporting; and incorporate the existing statutory prohibition on retaliating against workers for reporting injuries and illnesses.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.