



American Wire Producers Association

PO Box 151387  
Alexandria, VA 22315

## OSHA PUBLISHES FINAL CLARIFICATION ON RECORDABLE INJURY AND ILLNESS REPORTING

The Occupational Safety and Health Administration (OSHA) issued a final clarification rule 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. In other words, the duty does not expire because the employer did not report the injury or illness when first required to do so. This final rule becomes effective on January 18, 2017.

The Occupational Safety and Health Act of 1970 (OSH Act) arose out of a congressional finding that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses and disability compensation payments. The OSH Act specifically directs the Secretary to promulgate regulations requiring employers to make and maintain accurate records of work-related injuries and illnesses.

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 or illnesses. Employers also must prepare a supplementary "OSHA 301 Incident Report" or equivalent form for each recordable injury and illness. The Incident Reports provide additional details about the injuries and illnesses. Finally, at the end of each calendar year, employers must review their 300 Logs to verify that entries are complete. 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 each year. Employers must retain their OSHA Logs, Incident Reports and annual summaries for five years following the end of the calendar year.

One purpose of accurate injury and illness records 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 them. When employers analyze and review the information in their records, they can identify and correct hazardous workplace conditions.

Similarly, employees who have access to OSHA injury and illness records throughout

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office 703.299.4434 | email [info@awpa.org](mailto:info@awpa.org) | [www.awpa.org](http://www.awpa.org)

the five-year retention period can use information about the occupational injuries and illnesses occurring in their workplaces 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. When employees are aware of workplace hazards, and participate in the identification and control of those hazards, the overall level of safety and health in the workplace can improve.

OSHA also has access to employer injury and illness records during the retention period and these records are an important source of information for OSHA and enhance its enforcement efforts. During the initial stages of an inspection, an OSHA representative reviews the employer's injury and illness data so that OSHA can focus its inspection on the hazards revealed by the records.

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 (i.e., for 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 the employers 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 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. OSHA has consistently issued such citations since it enacted its first recordkeeping regulations. The purpose of this final rule is to clarify what has always been OSHA's interpretation of its recordkeeping regulations.

To read the rule in its entirety, follow this link: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-30410.pdf>.