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WHAT YOU NEED TO KNOW



OSHA Reporting Changes: Employer Checklist

The Occupational Safety and Health Administration (OSHA) has issued sweeping changes to record-keeping and reporting rules. Starting in 2017, employers with as few as 20 employees may be required to electronically report workplace injuries and illnesses on an annual basis, and the information from those reports will be searchable, *by employer name*, by any member of the public. Following is a checklist to help prepare for these changes.

Are you a “covered” employer?

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| <ul style="list-style-type: none"><input type="checkbox"/> Determine if you are a business with 20 or more employees that is considered “high risk”
<input type="checkbox"/> If you are not “high risk,” determine if you have at least 250 employees | <ul style="list-style-type: none">• The list includes most retailers, care facilities, transportation services, home delivery services, museums and historical sites, and specialty food services.• The complete list can be found on the OSHA website
• Headcount for OSHA means “the number of paid workers, including full time, part time and seasonal, assigned at any time during the last calendar year.”• Contract workers, if supervised by the host company, are included when recording injuries and illnesses.• Headcount is calculated by site, not as a company total |
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Review your employee communication (by August 2016)

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| <ul style="list-style-type: none"><input type="checkbox"/> Do you have the most recent OSHA poster in a place accessible to all employees?
<input type="checkbox"/> Employers must have a reasonable procedure for reporting work-related injuries and illnesses which does not deter or discourage employees from reporting | <ul style="list-style-type: none">• The poster must be dated April 2015 or later• Free copies are available on the OSHA website• Ensure that posters reflect the primary language of your employees if English is a second language.
<p>OSHA has not offered definitive guidance or template procedures, but has published opinions about provisions which will discourage employees from reporting.</p>• Review and rework procedures that have too many steps. For example, requiring employees to follow certain reporting hierarchies may be viewed as a deterrent.• Do not mandate immediate reporting as this has also been viewed as a deterrent. |
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Review your employee communication (continued)

- Employers must inform employees of their right to report work-related injuries and illnesses free from retaliation
- Be cautious of using employee handbooks to communicate reporting procedures. Handbooks often contain other dovetailing policies, like drug testing, that may be viewed as discouraging employee accident reporting.
 - Consider communication and training that is multi-faceted, continuous and varied, incorporating language and literacy barriers.

Review policies and handbooks

- Drug Policies**
Review drug testing policies to limit post-incident testing to situations in which drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use
- OSHA opinions do not negate federal laws that mandate drug testing (Department of Transportation, Nuclear Regulatory Commission).
 - If blanket drug testing is not otherwise mandated, possible changes include:
 1. Add a caveat to drug testing when it is possible that impaired behavior caused or contributed to an accident. For example, falls might be attributable to impairment but something falling on an employee is less likely to be caused by impairment.
 2. Consider drug testing when a defined level of property damage occurs.
 3. Change testing methods.- (For example, use saliva tests instead of urine testing for testing drug impairment)
 4. Use windows of time for testing (for example, 8 hours for alcohol).
 - Random testing and/or testing for reasonable suspicion are not impacted by this OSHA rule
- Discipline Policies**
Review discipline policies and practices to safeguard against deterring or discouraging employees from reporting
- Reporting an injury is a protected activity. OSHA is critical of discipline practices surrounding accidents.
 - Practices that should be reconsidered include:
 1. Blanket discipline of an employee for a safety violation after reporting an injury.
 2. Enforcing a rule more strictly for an injured employee than an uninjured employee.
 3. Disciplining an employee for the way in which the employee reported an injury.
 4. Disciplining an employee when they report an injury

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Review incentive programs

- Replace incentive programs that could be viewed as a deterrent to accident reporting
 - Programs that are viewed as deterrents for reporting accidents could include drawings for prizes that only uninjured employees can enter, or bonuses for safety records.
 - Supervisors are usually the front line for reporting injuries and illnesses. Make sure that they are not incentivized to reduce injuries to the point that they fail to report or worse, retaliate against injured employees.
 - OSHA encourages rewards for participation in and completion of training, rewards for safety suggestions, and general celebrations of initiatives that encourage safety.

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You should not act on this information without consulting legal counsel or other knowledgeable advisors.



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