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WHAT YOU NEED TO KNOW



OSHA's Final Rule on Electronic Tracking of Workplace Injuries and Illnesses

Beginning in 2017, certain employers with as few as 20 employees at a single site will be required to electronically file information about employee injuries and accidents that occurred in the prior year. This means that, for many of your clients, injuries and illnesses occurring in 2016 will be subject to this change.

Employers of as few as one employee have always been required, under the Occupational Safety and Health Act (OSHA), to report work-related in-patient hospitalizations and deaths. And, employers with at least 10 employees at a single site have been required to maintain and annually post a Form 300A log within their facility. These new regulations will place increased demands on hundreds of thousands of employers, but of greater concern is that OSHA intends to make public the information it collects.

OSHA's agenda is, quite simply, employer shaming. The quote from [the OSHA website](#) states:

OSHA believes that public disclosure will encourage employers to improve workplace safety and provide valuable information to workers, job seekers, customers, researchers and the general public.

Why should this be a concern?

One reason is that employers are required to report incidents that are outside of their control, including car accidents and heart attacks. These occurrences can negatively impact an employer's image to applicants and customers. Further, such incidents are reportable even if they are later found to be not attributable to the employer. A second issue is that labor unions can mine data and use the information in organization efforts. Similarly, competitors will have visibility into rival businesses. Finally, Form 300A reporting includes multiple identifiers that may present challenges with HIPAA, especially in less populated areas.

Current practices that are affected by these new rules include:

1. Employers covered under OSHA-approved State Plans are not exempt from the new standards. In fact, state plans will be required to adopt "substantially identical" requirements within six months.
2. Employers affected by this change need to start maintaining illness and injury data electronically. OSHA has not released the means by which information will be uploaded, but employers should be aware. Manual reports will no longer be accepted by the agency.

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3. For employers with multiple locations, data must be provided separately by each site, not collectively. For example, a chain of auto parts stores with ten locations would be required to submit ten reports, not one.
4. Current safety incentive programs may be at risk. For example, programs that utilize “lagging indicators” such as statistics on incidents (for example, “X days without Injury” programs) may be found to discourage employees from reporting accidents.
5. Employers will be required to ramp up their communication to employees on how to report injuries and illnesses. The onus has always been on employers to ensure that employees understand the reporting process and have systems that take into consideration language, literacy, and other competencies. These systems will now be under greater scrutiny. OSHA is offering no guidance on how employers can meet this requirement, but providing access to the new OSHA poster is a minimum starting point (the posters are available in multiple languages and can be ordered by phone or online or downloaded from the [OSHA website](#)).
6. Under the existing rules, retaliation against an employee who reports an illness or injury was actionable *when the employee filed a complaint*. Under the new rules, OSHA can cite an employer without an employee complaint, including if OSHA believes that an employer has a program that deters or discourages employees from reporting incidents.
7. Post-accident drug testing may be deemed “retaliatory” if it is not done to comply with state or federal laws and regulations.

Key Dates

- August 2016 New anti-retaliation protections are effective
- Employers must inform employees of their right to report work-related injuries and illnesses free from retaliation
 - Employers must have a reasonable procedure for reporting work-related injuries and illnesses which does not deter or discourage employees from reporting
- January 2017 New data reporting rules go into effect
- July 2017 High risk employers of 20+ employees and employers with 250+ employees must electronically file Form 300A for 2016
- July 2018 Employers with 250+ employees must electronically file Forms 300A, 300, and 301
- March 2019 High risk employers of 20+ employees must electronically file Form 300A for the prior year. Employers of 250+ employees must electronically file Forms 300, 300A and 301

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