

OSHA's Revised Rule Publicizes Employer Injury and Illness Data

The Occupational Safety and Health Administration ("OSHA") recently issued a final rule that is intended to provide employees, employers, employee representatives, potential employees, customers, potential customers, public health researchers, the public and OSHA with injury and illness data (minus personally identifiable information) via posting on www.osha.gov.^[1] OSHA's attempt to "modernize" its long-standing data collection efforts and requirement that employers keep track of workers' injuries and illnesses by recording them in a log reflects OSHA's concern that more than three million workers are injured or become ill in the workplace each year.^[2] Because "no employer wants to be seen publicly as operating a dangerous workplace," OSHA believes the new rule will "nudge" employers to reduce or prevent worker injuries and illnesses and thus demonstrate that they operate safe and well-managed facilities.^[3]

All establishments with 250 or more employees in industries covered by the recordkeeping regulation soon will be obligated to electronically submit injury and illness information from OSHA Forms 300, 300A, and 301. Establishments with 2 to 249 employees will need to electronically submit information from OSHA Form 300A only. Previous requirements to complete and retain injury and illness records remain in effect, and the new electronic data submission requirements for certain establishments will be phased in as follows:

Submission year	Establishments with 250 or more employees	Establishments with 2-249 employees	Submission deadline
2017	Form 300A ^[4]	Form 300A	July 1, 2017
2018	Forms 300A, 300 ^[5] , 301 ^[6]	Form 300A	July 1, 2018

In 2019, the annual submission deadline will change from July 1 to March 2, because OSHA believes that the earlier a hazard is identified, the sooner it can be addressed and the better the chance of reducing worker injuries and illnesses.^[7] Moreover, according to OSHA, releasing injury and illness data in standard, open

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formats and giving the public access to large sets of workplace injury and illness data will:

- Encourage employers to increase their injury/illness prevention efforts, compelled by their competitive spirit "to race to the top in terms of worker safety."
- Enable researchers to examine data in innovative ways that employers may use to make their workplaces safer and healthier.
- Help identify new workplace safety hazards before they become widespread.
- Encourage workers to report work-related injuries or illnesses to their employers.
- Enable OSHA to better evaluate the impact of government injury prevention activities.
- Provide employers with access to establishment-specific data to enable them to benchmark their safety and health performance against industry leaders.
- Provide public health researchers with opportunities to advance the fields of injury and illness causation and prevention research.
- Provide OSHA with data to improve allocation of compliance assistance and enforcement resources, expanding its ability to identify, target and remove safety and health hazards, thereby preventing workplace injuries, illnesses and deaths.[\[8\]](#)

Finally, OSHA maintains that information accuracy and completeness is bolstered by promoting workers' rights to report without fear of retaliation. Consequently, the rule clarifies that an employer must have a reasonable procedure for reporting work related injuries that does not, "while nominally promoting safety, have the effect of discouraging workers from reporting injuries and, in turn leading to incomplete or inaccurate records of workplace hazards."[\[9\]](#) Employers may not retaliate against employees for reporting work-related injuries or illnesses. Employers may meet their obligation to inform employees of their right to report work-related injuries and illnesses free from retaliation by posting the *OSHA Job Safety and Health — It's The Law* worker rights poster from April 2015 or later.[\[10\]](#) These provisions take effect August 10, 2016.

OSHA's continuing revisions to its injury and illness recordkeeping/reporting requirements evidence its strong reliance on the rule to further its mission of assuring a safe and healthful workplace for workers. Employers should be cognizant of OSHA's focus on recordkeeping as a means to this end and increase their compliance efforts accordingly.



If you have any questions about OSHA's new public data sharing requirement, or about other recordkeeping obligations, please contact the authors.

[1] OSHA Fact Sheet, *Final Rule to Improve Tracking of Workplace Injuries and Illnesses* (May 2016), <https://www.osha.gov/Publications/OSHA3862.pdf>.

[2] Bureau of Labor Statistics Economic News Release, USDL-15-2086, *Employer-Reported Workplace Injury and Illness Summary* (Oct. 29, 2015), <http://www.bls.gov/news.release/osh.nr0.htm>.

[3] OSHA News Release, *OSHA's final rule to 'nudge' employers to prevent workplace injuries, illnesses* (May 11, 2016), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=31860.

[4] OSHA Summary of Work-Related Injuries and Illnesses, <https://www.osha.gov/recordkeeping/RKforms.html>.

[5] OSHA Log of Work-Related Injuries and Illnesses, <https://www.osha.gov/recordkeeping/RKforms.html>.

[6] OSHA Injury and Illness Incident Report, <https://www.osha.gov/recordkeeping/RKforms.html>.

[7] See OSHA Fact Sheet, *supra* note 3.

[8] See OSHA Fact Sheet, *supra* note 3.

[9] See OSHA News Release, *supra* note 2.

[10] See OSHA Fact Sheet, *supra* note 3.

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