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Categories:
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New OSHA Rule Requiring the Electronic Filing and Public Posting of Records Related to Workplace Illnesses and Injuries

On May 11, 2016, the U.S. Department of Labor released a controversial final rule that will require employers to electronically submit information about workplace injuries and illnesses that OSHA will then publish on a public website. The new requirements take effect in January 2017 and will apply to businesses that are already subject to OSHA's recordkeeping regulations and that employ 250 or more employees working in a single establishment, as well as to smaller businesses (with at least 20 employees) engaged in industries deemed particularly dangerous, such as manufacturing, construction, trucking, and farming, among others. State Plan states that operate their own job safety and health programs, such as Indiana, Kentucky, and Michigan, will be required to adopt requirements that are substantially identical to the Department of Labor's requirements by November 11, 2016.

The submission requirements will be phased in over a three-year period as follows:

Year	Covered employers with 250 or more employees in a single establishment	Covered employees in industries deemed particularly dangerous
2017	Form 300A	Form 300A
2018	Forms 300A, 300, 301	Form 300A
2019 (and after)	Forms 300A, 300, 301	Form 300A

For each covered employer, OSHA will post on its public website the injury and illness data that it has collected, though it states that it will use “scrubbing software” to remove “personally identifiable information” that could be used to identify individual employees before the data is released to the public.

Employers should note that the rule also contains an anti-retaliation provision intended to encourage workers to report work-related injuries or illnesses. Under the rule, employers are required to inform employees of their right to report work-related injuries and illnesses, are required to have reasonable procedures for reporting work-related injuries, and are prohibited from retaliating against employees for reporting work-related injuries or illnesses.

OSHA contends that the new rule will provide greater transparency, encourage compliance with workplace safety laws, and make it easier to identify trends in occupational hazards. In a news release, the Department of Labor boasted that “OSHA will create the largest publicly available data set on work injuries and illnesses, enabling researchers to better study injury causation [and] identify new workplace safety hazards before they become widespread and evaluate the effectiveness of injury and illness prevention activities.”

Employers and employer groups are concerned that the rule will lead to unwarranted public shaming of businesses, will result in invasions of employee and employer privacy, and will provide various interest groups with access to previously confidential information that can then be distorted in a manner that does not reflect the business’s commitment to safety.

You can view additional information about the changes to OSHA’s recordkeeping rule on [OSHA’s website](#).

You can also contact any of Frost Brown Todd’s OSHA specialists if you have questions about the new rule, your reporting or recordkeeping obligations under OSHA, or any other matter related to OSHA compliance, inspections, or citations.

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