

Do Your Injury and Illness Reporting Policies Comply with OSHA's New Requirements?



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The Occupational Safety and Health Administration (OSHA) is keeping its promise to push rulemaking initiatives during the Administration's final year.

On May 11, 2016, OSHA issued a final rule on two proposed amendments to its recordkeeping standards. The amendments will require many employers to electronically submit certain records to OSHA and will require all employers to evaluate their internal injury and illness reporting procedures. The electronic submission requirements are scheduled to be phased in beginning in 2017. The new injury and illness reporting policy requirements, however, are effective on August 10, 2016.

Injury and Illness Reporting Policies

The final rule also codifies OSHA's solution to its concern that employers are deterring employees from reporting workplace injuries and illnesses. Under the amended rule, employers must do the following by August 10, 2016:

- Establish a reasonable procedure for employees to report work-related injuries and illnesses;
- Inform each employee of the employer's procedure for reporting; and
- Inform each employee of the right to report work-related injuries and illnesses without being discharged or discriminated against.

OSHA's clarification that a procedure for reporting work-related injuries and illnesses is not "reasonable" if it would "deter or discourage a reasonable employee from accurately reporting a workplace injury or illness" may conflict with many employers' current policies, especially those that encourage timely reporting.

Earlier this year, OSHA sued U.S. Steel under the OSH Act's anti-retaliation provisions after U.S. Steel disciplined its employees for failing to immediately report a workplace injury in violation of U.S. Steel's reporting requirements. In that case, OSHA has taken the position that, "an injury or illness reporting policy that requires employees to report their workplace injuries or illnesses earlier than seven calendar days" after the employee becomes aware of his or her injury or illness deters and discourages accurate reporting.

OSHA will likely find rigid prompt-reporting rules to violate the amended standard, which raises concerns for employers trying to conduct thorough accident investigations to ensure the safety and health of employees and to provide employees with proper medical attention.

OSHA also has taken issue with "blanket post-injury drug testing policies" because the agency believes they "deter proper reporting." Instead, post-incident testing should be limited "to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use."

While section 11(c) of the OSH Act already prohibited retaliation against employees, it required an employee complaint before OSHA became involved. Under the amendment, OSHA will be able to cite an employer for a violation of the amended rule based on the employer's injury and illness reporting policies without an employee complaint. Employers should evaluate their injury and illness reporting policies between now and August 2016 to ensure that they do not violate OSHA's interpretation of this new rule.

Electronic Submission

OSHA's recordkeeping requirements are nothing new, but employers have only been required to provide those records to OSHA if requested during an inspection. The final rule requires establishments with 250 or more employees to electronically submit to OSHA the 300A Summary, 300 Log, and 301 Incident Report and establishments with 20 - 249 employees in all of the manufacturing NAICS codes to electronically submit to OSHA the 300A Summary. These data submissions will be phased in beginning in 2017.

(OSHA defines establishment as "a single physical location where business is conducted or where services or industrial operations are performed.")

OSHA will make the data publicly available on OSHA's website. OSHA believes that doing so will further its policy of "regulation by shaming" by encouraging employers to take additional actions to prevent workplace incidents in order to avoid a potentially negative impact on certain contracts and business relationships.

OSHA also plans to use the data to "effectively target" its enforcement resources. OSHA conducts two basic types of inspections: unprogrammed and programmed. Historically, unprogrammed inspections occurred in response to accidents of which OSHA becomes aware. Last year, the amended reporting requirement significantly increased the number of such accidents. The electronic recordkeeping will further increase OSHA's awareness of workplace accidents and provide OSHA with an additional basis for initiating accident-related inspections.

Because of the potential impact of the amendment, employers should be increasingly diligent in providing as safe and healthful of a workplace as possible.

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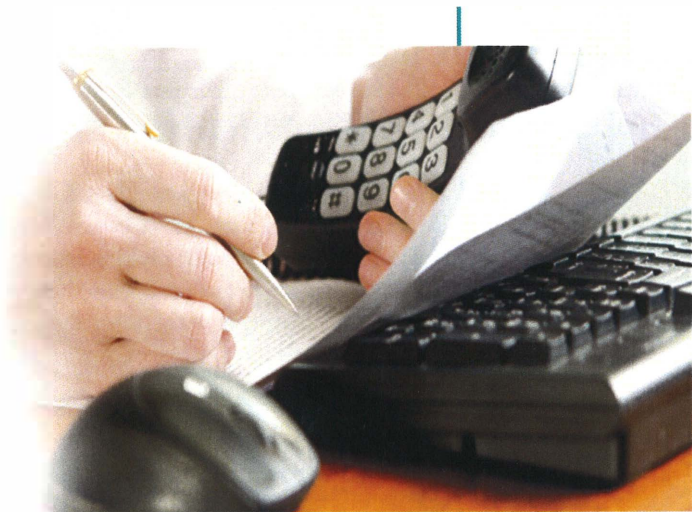


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