

CLIENT ALERT

OSHA Issues Final Rule on Recording and Reporting Occupational Injuries and Illness

MAY 25, 2016

On May 12, 2016, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) published a final rule amending OSHA's regulation on Recording and Reporting Occupational Injuries and Illnesses. Under the final rule, certain employers must now electronically submit annual records of work-related injuries and illness to OSHA. Additionally, the final rule provides: (1) all employers "must establish a reasonable procedure for employees to report work-related injuries and illness promptly and accurately;" (2) all employers must inform employees of their right to report work-related injuries and illnesses free from discrimination; (3) all employers must provide access to their injury and illness records for employees and their representatives; and (4) existing statutory prohibitions against retaliation for reporting work-related injuries or illnesses are expressly incorporated into the amendments.

Electronic Submission of Annual Injury and Illness Records to OSHA

In addition to employers' previous obligations to complete, retain, and certify injury and illness records, the final rule requires larger employers to now submit work injury and illness data to OSHA electronically. The new annual electronic submission requirement applies only to employers with 250 or more employees, regardless of industry, and to employers with 20 to 249 employees in designated hazardous industries. There are three OSHA forms employers with 250 employees must submit electronically: (1) OSHA Form 300A – Summary of Work-Related Injuries and Illnesses; (2) OSHA Form 300 – Log of Work-Related Injuries and Illnesses; and (3) OSHA Form 301 – Injury and Illness Incident Report. Employers with 20 to 249 employees in hazardous industries only are required to submit OSHA Form 300A. Notably, OSHA will make the reported data publicly accessible after removing all personally identifiable information.

The electronic submission requirement becomes effective January 1, 2017. Affected employers must submit their 2016 Form 300A by July 1, 2017, submit all 2017 forms by July 1, 2018, and every year thereafter submit all information by March 2 of the following year.

State Plan States – *i.e.*, states with their own OSHA-approved occupational safety and health plans – must adopt identical electronic submission requirements within six months after publication of the final rule. State plans cannot

affect the duties of employers to comply with the OSHA reporting rule. Qualifying employers in State Plan States must still submit the required injury and illness forms to OSHA.

Establishing a Reasonable Procedure for Reporting Work-Related Injuries and Illnesses

All employers, regardless of size or industry, must inform each employee of how he or she is to report a work-related injury or illness. Employers must further “establish a *reasonable* procedure for employees to report work-related injuries and illness promptly and accurately.” To be reasonable, a reporting procedure cannot “deter or discourage a reasonable employee from accurately reporting a workplace injury or illness.” This requirement becomes effective August 10, 2016.

Informing Employees of Their Right to Report Work-Related Injuries and Illnesses Free from Discrimination or Retaliation

The final rule also requires employers to inform each employee they “have the right to report work-related injuries and illnesses” and that “[e]mployers are prohibited from discharging or in any manner discriminating against employees” for doing so. One way for employers to meet this requirement is by posting OSHA’s “It’s The Law” worker rights poster from April 2015 or later (<http://www.osha.gov/Publications/poster.html>).

Like the “reasonable procedure” requirement, this mandate affects all employers, regardless of size or industry, and also takes effect August 10, 2016.

Providing Employees Access to Injury and Illness Records

Additionally, the final rule alters the scope of access to injury and illness records that employers must provide to employees. Previously, the regulation required employers to “provide *limited* access to [their] employees and their representatives.” The new rule eliminates the word “limited,” instead requiring employees to “provide access” to records to both employees and their representatives. The process for providing this access to employees has been “reserved” by OSHA.

Incorporates Existing Statutory Prohibition Against Retaliation for Reporting Work-related Injuries or Illnesses

Section 11(c) of OSHA already prohibits any person from discharging or otherwise discriminating against an employee who reports a fatality, injury, or illness. However, OSHA may not act under that section unless an employee files a complaint with the agency within 30 days of the alleged retaliatory act. In contrast, under the final rule, OSHA may cite an employer for retaliation even in the absence of an employee-filed complaint or an employer program that purportedly deters or discourages reporting.

The Final Rule in the Federal Register is available [here](#), and the answers to frequently asked questions may be found [here](#).

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