

OSHA Proposal Would Require E-Reporting and Public Posting of Injury and Illness Data

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On November 8, 2013, the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor proposed a new rule which, if adopted, will require employers to electronically report injury and illness data on a quarterly basis. This information is currently collected by employers under 29 C.F.R. § 1904. The proposed rule will amend § 1904.41 to add three new electronic reporting requirements. Perhaps most significantly, the proposed rule will require establishments with 250 or more employees to post their injury and illness data quarterly to a website that can be viewed publicly.

Section 1904 currently applies to three categories of employers:

- Employers under OSHA jurisdiction with 11 or more employees, unless the establishment is classified as a partially-exempt establishment
- Employers with ten or fewer employees, if the employer has been informed in writing by OSHA or the Bureau of Labor Statistics (BLS) that it must keep records under § 1904.41.
- Employers in partially-exempt industries, if they are informed in writing by OSHA or BLS that they must keep records under § 1904.41.

Under § 1904.29, covered employers must complete a Form 301 "Injury and Illness Incident Report" for each injury and illness at a covered establishment. Employers must also record each injury or illness on a Form 300 "Log of Work-Related Injuries and Illnesses." Additionally, employers must annually use the information from Forms 300 and 301 to complete Form 300A "Summary of Work-Related Injuries and Illnesses" for each covered establishment. At present, OSHA does not usually access this information, unless it conducts an inspection of the establishment or the establishment receives a targeted request for the information.

New Reporting Requirements

On November 8, 2013, the proposed rule was published in the Federal Register. It contemplates three

significant changes to § 1904:

- First, establishments that are required to keep injury records under § 1904, and that also had 250 or more employees in the previous calendar year, will be required to electronically submit information from these records to OSHA, or OSHA's designee, on a quarterly basis.
- Second, establishments that are required to keep injury and illness records under § 1904, and that also had 20 or more employees in the previous calendar year, and are in certain designated industries, will be required to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA, or an OSHA designee, on an annual basis.
- Third, OSHA will require all employers who receive notification from OSHA to electronically submit specified information from their § 1904 injury and illness records to OSHA, or OSHA's designee.

Electronic Submissions of Records Under § 1904.41(a)(1)

As stated above, under the proposed rule, establishments that employed 250 or more employees at any time during the previous calendar year will be required to electronically submit to OSHA all information from the records they keep under § 1904 on a quarterly basis. This information includes the Form 301 individual injury and illness reports, and the Form 300 log of injuries and illnesses. The Form 300A summary will be required to be submitted electronically on an annual basis.

Employers will be required to register their establishments on a secure website provided by OSHA. OSHA will provide employers with a login ID and a password. The website will allow employers to enter data directly, and to submit data through a batch file upload.

How Will This Data Be Used?

According to the proposed rule, OSHA will use the electronic submissions to compile a database of timely, establishment-specific injuries and illnesses, and to identify workplaces where workers are at greater risk of illness and injury. Additionally, OSHA will make the injury and illness data publically available online, as encouraged by President Obama's Open Government Initiative. Under OSHA's current recording system, employers are only able to access their own data. Under the proposed rule, employers would also be able to see the data of other employers. Additionally, employees will be able to access this information without asking their employers for it. The publication of specific elements of the data will be restricted by provisions under the Freedom of Information Act and the Privacy Act, as well as other provisions within § 1904. According to the proposed rule, it is OSHA's intention that employers use this data to make their work places safer for workers, and that workers use it to evaluate the relative safety of their work environments.

Timeframe

The public will have through February 6, 2014 to submit written comments on the proposed rule. On January 9, 2014 OSHA plans to hold a public meeting on the proposed rule in Washington, DC.

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