

COMPLIANCE OVERVIEW

Provided by Insight Risk Management, LLC

FAQs: OSHA Final Rule on Electronic Reporting

On **May 12, 2016**, the Occupational Safety and Health Administration (OSHA) issued a [final rule](#) requiring certain employers to electronically submit data from their work-related injury records to OSHA. The final rule also solidifies employee anti-retaliation protections for reporting work-related injuries and illnesses.

The final rule became effective on **Jan. 1, 2017**, but compliance with reporting deadlines will be phased in through 2019. The rule set the first reporting deadline for July 1, 2017, but OSHA has [proposed](#) delaying the first reporting deadline to **Dec. 1, 2017**. The public has been invited to comment on this delay until July 13, 2017.

OSHA will collect information on injuries and illnesses to identify emerging hazards, characterize specific areas of concern, or target inspection and outreach initiatives under OSHA's emphasis program.

LINKS AND RESOURCES

OSHA has made the following resources regarding the final rule on electronic reporting available to employers:

- [Final rule](#) and [press release](#)
- Final rule [fact sheet](#)
- Recordkeeping [web page](#)
- OSHA's [FAQs](#) on the final rule

HIGHLIGHTS

FINAL RULE

- The final rule does not create additional recording requirements.
- Establishments with 250 or more employees must submit data from their OSHA 300, 300A and 301 forms.
- Establishments with between 20 and 249 employees must submit data from their OSHA 300A forms if they are part of an identified high-risk industry.

IMPLEMENTATION

- **July 1, 2017:** Affected employers must submit data from OSHA Form 300A. **OSHA has proposed delaying this deadline to Dec. 1, 2017.**
- **July 1, 2018:** Some employers must submit data from OSHA Forms 300A, 300 and 301.
- **March 2 (2019 and beyond):** Affected employers must submit required data.

What does the final rule do?

The final rule revises OSHA's regulation on Recording and Reporting Occupational Injuries and Illnesses (29 CFR 1904). The new rule requires certain employers to electronically submit injury and illness data to OSHA that they are already required to keep under OSHA regulations. The content of these establishment-specific submissions depends on the size and industry of the employer. In order to ensure the completeness and accuracy of injury and illness data collected by employers and reported to OSHA, the final rule also:

1. Requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation;
2. Clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and
3. Incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses.

How will the rule benefit workers?

This rule will prevent worker injuries, illnesses and deaths. With the information obtained through this final rule, OSHA, employers, employees, employee representatives, other government agencies and researchers will be better able to identify and remove workplace hazards and thereby prevent worker injuries and illnesses.

Why is OSHA collecting the data and how will it be used?

Electronic submission of establishment-specific injury and illness data will enable OSHA to use its enforcement and compliance assistance resources more efficiently. Analysis of the data will improve OSHA's ability to identify, target, and remove safety and health hazards, thereby preventing workplace injuries, illnesses and deaths.

The agency will make the injury and illness data public, as encouraged by President Barack Obama's Open Government Initiative. After removing any personally identifiable information (PII) that could be used to identify individual employees, OSHA will post the data on www.osha.gov. Interested parties will be able to search and download the data. OSHA believes that posting timely, establishment-specific injury and illness data will provide valuable information to employers, employees, employee representatives and researchers.

This rule applies principles of behavioral economics underlying President Obama's Executive Order 13707, "Using Behavioral Science Insights to Better Serve the American People". OSHA believes that public disclosure of the data will "nudge" employers to improve workplace safety (without an OSHA inspection) in order to demonstrate to investors, job seekers, customers and the broader public that their workplaces provide safe and healthy work environments for their employees.

Does The Rule require employers to start keeping new records or change how they keep the records?

No. The new requirement does not add to or change an employer's obligation to complete, retain, and certify injury and illness records. It only requires certain employers to electronically submit some of the information from these records to OSHA.

Why does OSHA address retaliation in this rule? Isn't it already against the Law to retaliate against an employee for reporting a workplace injury or illness?

Section 11(c) of the Occupational Safety and Health Act 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 OSHA within 30 days of the retaliation.

In contrast, under the final rule, OSHA will be able to cite an employer for retaliation even if the employee did not file a complaint, or if the employer has a program that deters or discourages reporting through the threat of retaliation. Often the point of retaliating against an employee who reports a hazard is to intimidate them from asserting their rights. This new authority is important because it gives OSHA the ability to protect workers who have been subject to retaliation, even when they cannot speak up for themselves. The rule gives OSHA an important new tool in encouraging employers to maintain accurate and complete injury records.

How should an employer inform employees of their right to report work-related injuries and illnesses free from retaliation by their employer?

One way for employers to meet this requirement is by posting the OSHA "It's The Law" worker rights poster from April 2015 or later (<http://www.osha.gov/Publications/poster.html>). Employers also must establish a reporting procedure that does not deter or discourage an employee from reporting work-related injuries and illnesses.

May an employer require post-incident drug testing for an employee who reports a workplace injury or illness?

The rule does not prohibit drug testing of employees. It only prohibits employers from using drug testing, or the threat of drug testing, as a form of retaliation against employees who report injuries or illnesses. If an employer conducts drug testing to comply with the requirements of a state or federal law or regulation, the employer's motive would not be retaliatory and this rule would not prohibit such testing.

Does the rule allow an employer to have an employee incentive program?

This rule does not prohibit incentive programs. However, employers must not create incentive programs that deter or discourage an employee from reporting an injury or illness. Incentive programs should encourage safe work practices and promote worker participation in safety-related activities.

Does this rule apply TO employers in States with an Approved OSHA Plan?

Yes, within six months after publication of this final rule, State Plan states will have to adopt requirements that are substantially identical to the requirements in this final rule. Some states may choose to allow employers in their state to use the federal OSHA data collection website to meet the new reporting obligations. Other states may provide their own data collection sites. OSHA will provide further information and guidance as the states decide how to implement these new reporting requirements.

How can employers use this information to improve their own safety records?

Employers can use this information to benchmark their own safety performance. Currently, employers have no way to compare their safety performance with other firms in their industry. Using data collected under the final rule, employers will be able to compare injury rates at their establishments to those at comparable establishments, and set workplace safety goals benchmarked to other establishments in their industry.

Who must submit information electronically to OSHA under the final rule?

Establishments with 250 or more employees that are subject to OSHA's recordkeeping regulation must electronically submit to OSHA some of the information from the Log of Work-Related Injuries and Illnesses (OSHA Form 300), the Summary of Work-Related Injuries and Illnesses (OSHA Form 300A), and the Injury and Illness Incident Report (OSHA Form 301).

Establishments with 20-249 employees in [certain high-risk industries](#) must electronically submit to OSHA some of the information from the Summary of Work-Related Injuries and Illnesses (OSHA Form 300A).

Establishments with fewer than 20 employees at all times during the year do not have to routinely submit information electronically to OSHA.

When do I have to submit data Electronically to OSHA?

The final rule takes effect on Jan. 1, 2017, and reporting requirements will be phased in over two years, as follows:

Under the final rule, establishments with 250 or more employees must begin submitting information from Form 300A by July 1, 2017, and must submit information from all forms (300A, 300 and 301) by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

Similarly, establishments with 20-249 employees in [certain high-risk industries](#) must begin submitting information from Form 300A by July 1, 2017, and again by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

However, OSHA has indicated it will not be ready to receive the first reports by July 1, 2017 and has proposed extending this deadline to Dec. 1, 2017. OSHA's [Injury Tracking Application \(ITA\)](#) will launch on Aug. 1, 2017.

How should the data be submitted and how long will it take?

OSHA will provide a secure website for the electronic submission of information. The website will include web forms for direct data entry and instructions for other means of submission (e.g., file uploads).

For establishments with 20-249 employees that are required to report, OSHA estimates that it will take a typical employer about 10 minutes to create an account and another 10 minutes to enter the required information from the Summary of Work-Related Injuries and Illnesses (Form 300A).

For establishments with 250 or more employees, OSHA estimates that it will take a typical employer about 10 minutes to create an account, 10 minutes to enter the required information from the Summary of Work-Related Injuries and Illnesses (Form 300A), and 12 minutes to enter the required information for each injury or illness recorded on their Log and Injury and Illness Incident Report forms (Forms 300 and 301).

Establishments must submit the information electronically and may not submit the information on paper. Employers who do not have the necessary equipment or internet connection may submit their data from a public facility, such as a library. OSHA also intends to provide an interface for entering data from a mobile device.

How will Personally Identifiable Information (PII) be protected?

OSHA has effective safeguards in place to prevent the disclosure of personal or confidential information contained in the recordkeeping forms and submitted to OSHA. OSHA will not collect employee names, employee addresses, names of physician or other health care professionals, or health care facility names and addresses if treatment was given away from the worksite. All of the case-specific narrative information in employer reports will be scrubbed for PII using software that will search for, and de-identify, personally identifiable information before the data are posted.