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Compliance Overview | OSHA FAQs Electronic Reporting Requirements

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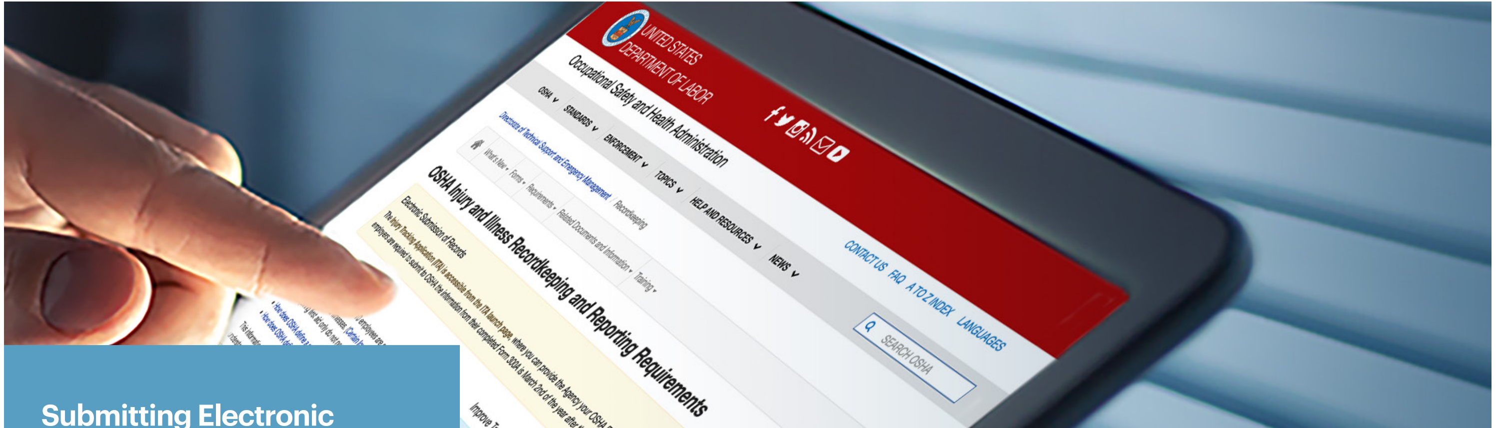

Submitting Electronic Reports

- Establishments must use OSHA's Injury Tracking Application.
- Users can manually enter data into a web form.
- Users can also upload a CSV file (comma separated value spreadsheet) to process multiple establishments at the same time.
- Finally, users of automated recordkeeping systems can transmit data electronically via an API (application programming interface).

OSHA Intent

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.

In 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 solidified employee anti-retaliation protections for reporting work-related injuries and illnesses.

The rule became effective on Jan. 1, 2017, but compliance with reporting deadlines were phased in through 2019. Under the rule, establishments are required to report information from their OSHA Form 300A **by March 2** of every year if they:

- Have 250 or more employees and are already required to record work-related injuries and illnesses;
- Have between 20 and 249 employees and belong to a high-risk industry; or
- Receive a special request from OSHA or the Bureau of Labor Statistics to submit these reports.

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.

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.

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.

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 State Plan states?

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 record?

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 the information from the Summary of Work-Related Injuries and Illnesses (OSHA Form 300A).
- **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.

Are the electronic reporting requirements based on the size of the establishment or the size of the firm?

The electronic reporting requirements are based on the size of the establishment, not the firm. The OSHA injury and illness records are maintained at the establishment level. An establishment is defined as a single physical location where business is conducted or where services or industrial operations are performed. A firm may be comprised of one or more establishments. To determine if you need to provide OSHA with the required data for an establishment, you need to determine the establishment's peak employment during the last calendar year. Each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

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).

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).

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.

Links and Resources

- 2016 final rule and press release
- 2019 final rule (amending the 2016 final rule to remove requirements for data from Form 300 and 301)
- OSHA's FAQs on the final rule

Questions? | **losscontrol@copperpoint.com**

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