

OSHA's Expanded Recordkeeping Rule Places Additional Obligations on Certain Employers

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On July 17, 2023, the Occupational Safety and Health Administration ("OSHA") issued a final rule, which updates and expands the agency's recordkeeping requirements for certain employers in specified industries. This new rule is set to take effect on January 1, 2024.^[1]

Under OSHA's current rules, covered employers with 250 or more employees must electronically submit the information found in their Form 300A Injury and Illness Logs directly to OSHA. As for employers with between 20 and 249 employees, only those in certain industries (such as department stores, construction, manufacturing, etc.) are required to submit this data. Now, OSHA's new rule expands these recordkeeping requirements to a wider array of employers—and requires some employers to provide a wider array of information.

Under the revised regulations, employers in "high risk" industries with at least 100 employees at one establishment must now provide certain information on their OSHA 300 and 301 forms directly to OSHA on an annual basis. Specifically, these employers must now submit their 300 Log, corresponding 301 Incident Reports, and 300A Annual Summary Data directly to OSHA electronically. OSHA published the list of "high-risk" industries subject to this new requirement in **Appendix B** to the new rule. OSHA determined which industries were "high risk" by looking to a number of criteria, including: industries' total recordable cases; days away, restricted, or transferred rates; and the number of fatalities that occurred in each industry. Those industries include food production, retail, manufacturing, warehousing, healthcare, and transportation, among others.

Additionally, employers with 20 to 249 employees that are within an industry listed in OSHA's proposed **Appendix A** will now be required to submit their 300A Annual Summary Data. As before, employers with at least 250 employees in any industry must continue to submit this 300A

Annual Summary Data.

OSHA's Unprecedented Access to Workplace Data

According to OSHA, “expanded public access to establishment-specific, case-specific injury and illness data” will allow various stakeholders to “make more informed decisions about workplace safety and health at a given establishment.” OSHA further explained that it will use this additional data to proactively intervene with strategic outreach and enforcement measures. OSHA believes it can implement a more tailored approach to address specific hazards that arise in the American workplace by expanding its data collection to include more injury and illness information.

Following implementation of this new rule, OSHA will gather more on-the-job injury and illness data than ever before. Currently, OSHA may only obtain most of this illness and injury data upon request. Now, OSHA no longer needs to request this information, but will instead receive it directly as a matter of course on an annual basis. Beginning on March 2, 2024, many employers will now have an affirmative (and recurring) duty to provide their injury and illness data directly to OSHA. And even with these new reporting obligations, OSHA still retains the authority to request injury and illness logs during inspections of all employers who are required to keep such records.

This data will provide OSHA a new perspective of employers’ safety practices. The breadth of this additional information will almost surely bring increased enforcement and compliance measures. An employer’s reported data may illustrate trends that catch OSHA’s eye and lead, in turn, to closer scrutiny of its overall workplace health and safety practices. Although OSHA’s recordkeeping regulations provide, “[r]ecording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated,” its Field Operations Manual explicitly permits its inspectors to “expand the scope of the inspection if there is evidence (e.g., from injury and illness records, plain view hazards, or employee interviews) that there may be violative conditions in other portions of the workplace.”

That is, OSHA retains discretion to expand its inspection of an employer’s workplace based on its review of injury and illness logs. Under this new rule, these logs will now be required annual submissions to OSHA for many employers. In other words, OSHA now has more tools at its disposal to identify and address perceived threats in the workplace. OSHA has justified this change by touting the benefits of collecting and publishing the Forms 300 and 301 data, which it claims outweigh the potential intrusion into to employee privacy.

How Should I Prepare for these Revised Regulations?

Employers should take special care to ensure the complete accuracy of their OSHA recordkeeping forms. Once the data is disclosed and posted, it may be difficult for employers to revise the information they provided. Additionally, OSHA reviews these logs upon receipt to identify potential discrepancies. For each such discrepancy, OSHA may issue citations and monetary penalties depending on the nature of the errors. Also, this information may potentially become available to the public via Freedom of Information Act requests. Labor unions and other third parties may utilize this data to which they may previously have not had access. Accordingly, employers should prioritize meticulously checking these now-required disclosures for accuracy

before submitting to OSHA.

Employers should also keep a close watch on their specific employee count throughout the year. Because more employees may mean heightened recordkeeping requirements, employers should be careful to monitor exactly how many employees they have at any given time.

In the new year, covered employers should be prepared to post their 300A summaries from February 1 through April 30, 2024. They should also be prepared to submit electronically their 300, 300A, and/or 301 incident reports for 2023 calendar year data by March 2, 2024. In the meantime, internal audits can be a valuable tool to identify recordkeeping issues or potential injury trends that could pique OSHA's interest. Under the new rule, increased scrutiny of employers' recordkeeping practices (and increased enforcement for recordkeeping violations) will likely become the norm. By addressing these issues early, employers can identify and correct concerns before troubles ever arise.

Our Maynard Nexsen team stands ready to assist employers in evaluating the impact of OSHA's new recordkeeping rules on their business practices. Please contact us for additional information or guidance.

[1] The final rule directly applies in federal OSHA states, not necessarily in states with their own occupational safety and health plans; state plans are required to adopt similar requirements to the final rule within six months.