

May 24, 2016

Labor and Employment Update

Modified OSHA Regulations Require Certain Automatic Work-Related Accident and Illness Information Disclosures

Effective January 1, 2017, two categories of employers will have to routinely submit information that they were already required to keep and make available for inspection under existing injury and illness recordkeeping regulations.

- Establishments that had 250 or more employees at any time during the previous calendar year
- Establishments that had 20 or more employees but fewer than 250 employees, which classify as a high risk industry under OSHA's recordkeeping regulation

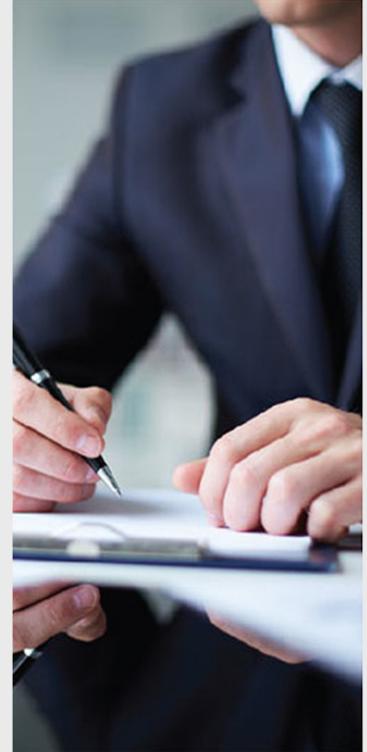
The information to be submitted is that which the covered employers were already required to keep in Forms 300 (Log of Work-Related Injuries and Illnesses), 300A (Summary of Work-Related Injuries and Illnesses), and 301 (Injury and Illness Incident Report). This information will now be published by OSHA in an effort to "nudge" employers into maintaining a safe workplace.

Employers in these categories must electronically submit the information to OSHA, once a year, in July 1 of 2017 and then July of 2018. The deadline moves up to March 2 as of 2019.

Establishments that fall outside of these two categories must submit information from the injury and illness records to OSHA only if OSHA issues an individual data collection request. State agencies have six months from publication (May 12, 2016) to issue substantially identical rules.

The new rules contain a prohibition against retaliation for reporting work-related injuries and require employers to have reasonable reporting procedures that do not discourage employees from using them. OSHA notes that this does not prohibit employers from conducting drug testing of employees, but it does prohibit them from using drug testing as a form of retaliation. Employers in Puerto Rico covered by this rule must ensure that any drug testing they conduct pursuant to a program adopted under Puerto Rico Law No. 59 of August 8, 1997, is not used in such a retaliatory manner. Conversely, 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. The effective date for the employers to inform their employees about their right to report a work-related injury and to inform them about the prohibition from discharging or otherwise discriminating against them for doing so will be August 10, 2016.

Our attorneys at Reichard & Escalera are available to assist you in understanding and implementing these developments. For more information regarding the new rules you may also access



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<https://www.osha.gov/recordkeeping/finalrule/RegulatoryTextforRecordkeepingStandard-Part1904.pdf>

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