

THE NATIONAL LAW REVIEW

OSHA Has a “Naughty” List - And Nearly One-Third of Large Employers Are on It. Are You?

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[OSHA](#) (the Occupational Safety and Health Administration) issued its [electronic injury reporting rule](#) in May, 2016. When issued, OSHA had intended all employers (over time) to submit their injury and illness records (OSHA Form 300 log of work-related injuries and illnesses), OSHA Form 301 (injury and illness incident report), and OSHA 300A (annual summary of work-related injuries and illnesses by establishment) via a “secure” electronic system. OSHA would then use this information to publicly shame employers who had high injury or illness rates. The initial electronic filing obligation was limited to employers with 250 or more employees and employers with 20-249 employees that are classified in [certain industries with historically high rates of occupational injuries and illnesses](#). The initial filing was limited to the OSHA Form 300A, with a filing due date of July 1, 2017; which was then later moved back to December 30, 2017.

In the lead up to Dec. 30, 2017, some 214,000 300A forms were filed; however, this fell far short of the more than 350,000 reports OSHA had expected. That is, nearly one-third of all employers who were otherwise required to electronically file their OSHA 300A failed to do so.

As a result, on February 21, 2018, OSHA issued [Interim Enforcement Procedures for Failure to Submit Electronic Illness and Injury Records](#). The Interim Enforcement Procedures required OSHA compliance officers to seek evidence, when conducting any inspection, of whether the employer had met its electronic filing requirement; and if not, to then issue an Other-Than-Serious citation, with a potential penalty of up to \$12,934.

On June 26, 2018, OSHA reminded employers of their obligation to file the 2017 OSHA Form 300A via the electronic web site by the July 1, 2018 deadline. Again, there has been a significant dearth of filings. OSHA has decided to take the “stick” approach, and on October 17th, it announced its new [Site-Specific Targeting 2016 Program](#). According to the [OSHA Release](#) on the Program, “the agency will perform inspections of employers the agency believes should have provided 300A data, but did not for the CY 2016 injury and illness data collection.” Where a compliance officer discovers a failure to comply with the electronic filing requirement (for 2017’s obligation), Other-Than-Serious citations are to be issued consistent with the Interim Enforcement Procedures.

The [web site](#) for filing a required OSHA Form 300A will no longer accept 2016 filings, but will continue to allow employers to upload their 2017 Form 300A, likely through the remainder of the year. Forms filed after the July 1st deadline are marked as “late,” but under the Interim Enforcement Procedures, any citation issued for failing to timely file the form would not be penalized if it was filed prior to the inspection.

In 2019, employers who are required to file their Form 300A electronically must do so by [March 2, 2019](#).

While OSHA under the Trump Administration has continued to press employers to comply with the electronic filing obligation of the OSHA 300A, it has scaled back any expectation that requirements for filing the OSHA 300 log or the OSHA Form 301s will come to pass. On September 28, 2018, OSHA issued a [proposed rule](#) eliminating the electronic filing requirement for the 300 Log and Form 301s.



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