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OSHA Finalizes Rule Rescinding Electronic Submission of Certain Injury and Illness Records

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OSHA has finalized a [rule](#) that rescinds the requirement for establishments with 250 or more employees to electronically submit their OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and Form 301 (Injury and Illness Incident Report) to OSHA on an annual basis. This action eliminates a requirement that arose out of OSHA's 2016 electronic reporting rule and had an initial compliance deadline of July 1, 2018, but had not yet been enforced by OSHA. As set forth in the preamble to the final rule, OSHA rescinded this requirement based on concerns that the electronic submission of Forms 300 and 301 "would subject sensitive worker information to a meaningful risk of public disclosure."

OSHA's May 2016 electronic reporting rule required the electronic reporting of certain injury and illness records to OSHA on an annual basis and established anti-retaliation provisions that were designed to deter the under-reporting of workplace injuries and illnesses. Under the 2016 rule, establishments in industries that OSHA has designated as "[high risk](#)" were required to electronically submit their Form 300A (Summary of Work-Related Injuries and Illnesses) and establishments with 250 or more employees to were required to electronically submit their Forms 300A, 300, and 301. Following multiple delays, the initial deadline for employers to submit their Form 300A to OSHA was December 15, 2017. The initial deadline for submission of Forms 300 and 301 was set for July 1, 2018, but OSHA announced that it would not enforce that deadline and that rulemaking was underway to remove the requirement to submit Forms 300 and 301.

On July 30, 2018, OSHA issued a notice of proposed rulemaking proposing to amend its recordkeeping regulations to remove the requirement for establishments with 250 or more employees to submit their Forms 300 and 301 to OSHA. Following a public comment period, OSHA proceeded to issue the final rule on January 25, 2019. As was anticipated, the final rule eliminates the requirement for establishments with 250 or more employees to submit the more detailed Forms 300 and 301 to OSHA, in an effort "to protect worker privacy."

OSHA's final rule does not impact employers' obligations to submit their OSHA Form 300A to OSHA on an annual basis or to comply with the electronic reporting rule's anti-retaliation provisions. As set forth in the final rule, OSHA has begun using the Form 300A information that has been electronically submitted to OSHA to target its enforcement efforts and will continue to do so. Likewise, the anti-retaliation provisions will remain in effect, and the final rule directs employers to recent OSHA guidance that clarifies these provisions. (For additional discussion of this guidance, please see our prior alert [here](#)).

Under OSHA's final rule, employers will also be required to submit their Employer Identification Numbers (EINs) in connection with the submittal of their Form 300As. According to OSHA, the submission of EINs will allow OSHA and the Bureau of Labor Statistics to coordinate their data collection efforts and help reduce duplicative reporting. The first compliance deadline for the submission of EINs is March 2, 2020; employers will not be required to submit their EINs with the Form 300As that are due March 2, 2019.

Injury and illness recordkeeping and reporting is an important component of OSHA compliance. Employers should review their recordkeeping programs to ensure that they satisfy the requirements of OSHA's recordkeeping regulations.



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