

OSHA Announces Expanded Electronic Injury and Illness Reporting Requirements

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On Monday, July 17, 2023, the Occupational Safety and Health Administration (OSHA) [announced](#) a long-anticipated update to its rule requiring electronic submission of injury and illness data. The updated rule goes into effect on January 1, 2024, and will require employers in “high-hazard industries” with 100 or more employees to submit both their OSHA Form 300 and Form 301 electronically using OSHA’s Injury Tracking Application (ITA).

Quick Hits

- On July 17, 2023, OSHA announced a final rule that will require certain high-hazard industry employers to electronically submit injury and illness information.
- The final rule will require covered employers to electronically submit their Form 300-Log of Work-Related Injuries and Illnesses and Form 301-Injury and Illness Incident Report, in addition to the OSHA Form 300A to OSHA once per year.
- The final rule will be published in the [Federal Register](#) on July 21, 2023, and goes into effect on January 1, 2024.

On May 12, 2016, OSHA published the [first version](#) of an electronic submission rule, which required employers (except those exempted from OSHA recordkeeping) with 250 or more employees and establishments with 20 to 249 employees in designated industries to electronically submit information from their OSHA Forms 300, 300A, and 301. Implementation of that rule was delayed until July 2018, but due to various challenges and rulemaking activities, OSHA Forms 300A and 301 were not submitted to OSHA under that version of the rule.

OSHA again [revised the rule on January 25, 2019](#), and eliminated the requirement for electronic submission of OSHA Forms 300 and 301 data by establishments with 250 or more employees. Accordingly, no employer of any size would be required to submit anything more than the OSHA Form 300A.

In a March 30, 2022, notice of proposed rulemaking (NPRM), OSHA announced a proposed rule that would require employers of 100 or more employees in certain designated industries to electronically submit information from their OSHA Forms 300 and 301 to OSHA annually. The NPRM also would require employers in certain industries with more than 20 employees to submit their OSHA Form 300A annually. The March 30, 2022, NPRM included a deadline for comments that closed on May 30, 2022, but on May 25, 2022, OSHA extended the comment period until June 30, 2022, and received 87 comments.

The most recent version of the rule, as published, will require establishments in certain identified industry sectors with more than 100 employees to electronically submit their OSHA Forms 300A, 300, and 301. The data that is collected from the OSHA Forms 300A, 300, and 301 will be made available to the public, with limitations on the data that is available from the OSHA Form 301.

The final appendix B lists the covered industries—a selection of which can be found below:

- 1121 Cattle Ranching and Farming
- 1133 Logging
- 1141 Fishing
- 2213 Water, Sewage and Other Systems
- 2381 Foundation, Structure, and Building Exterior Contractors
- 3115 Dairy Product Manufacturing
- 3116 Animal Slaughtering and Processing
- 3117 Seafood Product Preparation and Packaging
- 3118 Bakeries and Tortilla Manufacturing
- 3119 Other Food Manufacturing
- 3261 Plastics Product Manufacturing
- 3312 Steel Product Manufacturing from Purchased Steel
- 3314 Nonferrous Metal (except Aluminum) Production and Processing
- 3323 Architectural and Structural Metals Manufacturing
- 3325 Hardware Manufacturing
- 3327 Machine Shops; Turned Product; and Screw, Nut, and Bolt Manufacturing
- 4244 Grocery and Related Product Merchant Wholesalers
- 4413 Automotive Parts, Accessories, and Tire Stores
- 4441 Building Material and Supplies Dealers
- 4451 Grocery Stores
- 4522 Department Stores
- 4841 General Freight Trucking
- 4859 Other Transit and Ground Passenger Transportation
- 4921 Couriers and Express Delivery Services
- 4931 Warehousing and Storage
- 5621 Waste Collection
- 6219 Other Ambulatory Health Care Services
- 6221 General Medical and Surgical Hospitals
- 6243 Vocational Rehabilitation Services
- 7112 Spectator Sports
- 7131 Amusement Parks and Arcades
- 7211 Traveler Accommodation

The data from the OSHA Form 301 that will not be made available to the public includes the data from fields one through nine. Data from Field 1- employee name, Field 2- employee address, Field 6-

name of physician or other health care professional, and Field 7-facility name and address if treatment was given away from the worksite will not be collected.

Moreover, OSHA will try to reduce the possibility of the release of information that could be expected to identify individuals directly in multiple ways, including by limiting the worker information collected, designing the collection system to provide extra protections for some of the information that employers will be required to submit, withholding certain fields from public disclosure, and using automated software to identify and remove information that could reasonably be expected to identify individuals directly.

Key Takeaways for Employers

The new rule stands to impact employers in at least three ways. First, the rule increases OSHA's ability to target employers in "programmed inspections," such as the recently published [national emphasis program \(NEP\) related to warehousing and distribution centers](#). The lists from which OSHA will target employers in that NEP is based on Form 300A data. Now, OSHA will have access to a different form of the same data with increased details about the injuries and illnesses that those employers' employees are experiencing, the names of injured employees, the mechanisms of injury, etc.

Second, when it enters an establishment subject to the new rule, the new rule gives OSHA a more fulsome understanding of the injury and illness history in that establishment that the agency may be able to use to predetermine whether the establishment should fall under the instance-by-instance citation policy. This knowledge could significantly increase the exposure of employers in those establishments if OSHA analyzes the data to determine areas within the worksite that need to be subject to scrutiny. Third, the new rule will allow OSHA to enter an establishment with the names of employees who have been injured or who have been ill and target those employees for interviews as opposed to randomly asking for employees to be produced for interviews.

A related issue is the rule's new requirement to use OSHA's ITA, which is reportedly unreliable and hard to use. The new requirement to use the ITA may overwhelm the ITA, and cause issues for employers with regard to the process of uploading data. Employers might anticipate that compliance with this new requirement will take far longer than expected. In addition, the updated rule's expansion of coverage will likely mean a number of employers do not realize they have this responsibility and may fail to comply with the requirement to upload the required data.

Noncompliance can result in a citation in and of itself, which, when combined with the instance-by-instance citation policy, could lead to massive penalties if OSHA were to apply that policy per each employee injury or illness that an employer fails to report electronically—which the agency could do. While that outcome would not be expected under normal circumstances, employers with issues with recordkeeping or high injury rates may face that outcome.

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National Law Review, Volume XIII, Number 199

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