

# OSHA Issues Final Rule Regarding Injury and Illness Reporting

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Yesterday, **OSHA** issued its long-anticipated [final rule](#) regarding injury and illness reporting. The final rule generally requires employers to submit electronically certain injury and illness information. OSHA will place that information on an online searchable database. The final rule also enhances anti-retaliation protections regarding reporting injuries and illnesses in the workplace. OSHA originally proposed the rule in 2013. The proposed rule generated significant interest, with more than 450 comments submitted during the rulemaking process.

The final rule requires the electronic submission—depending on the establishment’s size—of certain types of information regarding workplace injuries and illnesses found on OSHA forms already maintained by employers. Establishments with 250 or more employees must provide the most information while establishments with 20-249 employees must provide a more limited set of information. OSHA is phasing in the full reporting requirements over the next three years, with the first submissions due on March 2, 2017.

OSHA will make the information public in an online searchable database but will exclude any personally identifiable information. OSHA claims that as a result of the final rule, “employers, employees, employee representatives, the government, and researchers may be better able to identify and mitigate workplace hazards and thereby prevent workplace injuries and illnesses.” OSHA also stated that the final rule will allow it “to more effectively target its enforcement resources to establishments with high rates or numbers of workplaces with injuries or illnesses, and better evaluate its interventions.”

The final rule also requires employers to (1) inform employees of their right to report work-related injuries and illnesses free from retaliation and (2) implement reasonable reporting methods that do not deter or discourage employees from reporting.

OSHA included an enhanced anti-retaliation provision in the final rule forbidding employers from discharging or “in any manner” discriminating against an employee for reporting a work-related injury or illness. The final rule allows OSHA to proceed against an employer even if the employee did not file a complaint of retaliation. During the rulemaking process, some commenters expressed concerns

that such an anti-retaliation provision may interfere with employee discipline for violating safety rules or certain drug testing policies. OSHA provided some guidance as to when such policies would not run afoul of the final rule.

Employers should begin now to assess their ability to process and submit the applicable reports in electronic form. They should also begin to assess policies related to reporting injuries and illnesses to determine whether any of them may discourage reporting.

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