

OSHA Electronic Reporting Regulations Are “Online” - Part 1: The Final Rule

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On May 11, 2016, the Occupational Safety and Health Administration (OSHA) published the long-awaited final rule revising its *Recording and Reporting of Occupational Injuries and Illnesses* regulations. The sweeping changes establish a new system in which many employers will be required to submit to OSHA reportable injury and illness information on an annual basis through a secure website. That information will then be published in a searchable and publicly accessible online database. In addition to electronic reporting, the rules make dramatic changes to OSHA's retaliation and discrimination enforcement abilities, which go into effect on August 10, 2016. The rules create a rollout schedule requiring employers to partially comply by electronically submitting Form 300A summaries on or before July 1, 2017. Employers with 250 or more employees will have to comply in-full by July 1, 2018, and all employers with at least 20 employees will have to fully report by March 1, 2019. OSHA also published wide-ranging comments offering novel theories on how it intends to interpret and enforce its rules and the OSH Act, the effects of which could be profound. As employers focus on the reporting requirements, they should not miss the more immediate impact of the rule that attacks many common employer policies regarding injury reporting, safety incentive programs and drug testing.

This is the first in a six-part series of alerts on the new rule. Subsequent alerts will address a potential ban on automatic post-accident drug testing, policies regarding injury reporting and incentive plans, the impact of the reporting rule on company branding, the likely rise in whistleblower claims (retaliation) related to denial of worker's compensation benefits and OSHA requirements for policy changes and posting of rules about reporting of injury claims.

The Final Rule: The Basics

The final rule makes multiple changes to the regulations implementing the OSH Act. Here is a brief rundown of what you need to know about the rule:

(1) **Electronic Reporting and Publishing:** Employers with at least 250 employees at any time during a calendar year will be required to electronically submit, on an annual basis, the OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report. Employers with between 20 and 249 employees will be required to submit the OSHA Form 300A summaries annually. Subject to the rollout schedule describe above, reporting will be due on or before March 1 of year following the year in which reporting is required. OSHA will publish this information in a searchable database. OSHA also is likely to make the information available through an app that is currently under development.

(2) **What about Privacy?** In response to an uproar over privacy concerns, OSHA has clarified that employers will not be required to report the name or address of the injured employee, name of the treating physician or health care professional, and facility name and address, if the employee was treated away from the worksite. Still, information about the nature, timing and location of the injury will become publicly searchable.

(3) **Who counts as an employee?** While the Notice of Proposed Rulemaking was unclear, OSHA clarified in the final rule that part-time, seasonal and temporary workers count as employees. In fact, any person employed at any time during a calendar year counts as an employee, according to the new rules.

(4) **Where do you report?** OSHA says it will provide a “secure Web site for the electronic submission of information.” Little is known about the reporting or publishing websites.

(5) **Do you have to inform employees?** The rules require employers to involve employees and their representatives in the new recordkeeping system, including through the creation of a “reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately.” We will expand on OSHA’s definition of “reasonable” and “promptly” in a forthcoming alert. OSHA also has added a [posting requirement to notify employees of their rights to report an injury or illness](#).

(6) **New Retaliation Component:** The rules create a new retaliation claim prohibiting discrimination against any employee who reports an injury or illness. This prohibition may be enforced by OSHA *even if an employee has not filed a complaint*. The new retaliation and discrimination provision becomes effective 90 days after publication, or August 10, 2016.

Employers should be prepared to have much of their injury and illness data published for the world to see. OSHA has indicated it will be active in promoting this new database (and shaming employers) and has carved out the right to create new retaliation and discrimination cases.

Click here to read Part 2 - [New OSHA Rule Might Make Automatic Post-Accident Testing Illegal: Electronic Reporting Regulations Are “Online” - Part 2](#)

Click here to read Part 3: [OSHA Pushes Back Effective Date of Anti-Retaliation Provisions of Final Rule](#)

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