

The Occupational Safety and Health Administration's (OSHA) new rule to Improve Tracking of Workplace Injuries and Illnesses took effect in two phases. The first phase began November 2016 and the second January 1, 2017.

Beginning in November, 2016, the new rule required employers to have a reasonable procedure encouraging employees to promptly report work-related injuries and illnesses.

Beginning on January 1, 2017, covered employers were to begin electronically submitting the injury and illness reporting forms to OSHA for publication on a website open to the public.

By November 2016, employers were supposed to amend their injury and illness policies to

- (a) Expressly state that employees have a right to report work-related injuries and illnesses,
- (b) Provide a procedure for employees to report such workplace injuries and illnesses,
- (c) Not deter or discourage employees from reporting such injuries and illnesses, and
- (d) Assure employees there will be no discrimination or retaliation against employees for making such reports.

According to the comments to criterion (b) above, OSHA will consider unreasonable any rule requiring *immediate* reporting, especially if there is the possibility of discipline if the employee fails to immediately report the injury or illness. OSHA will approve requiring employees to report injuries *as soon as reasonably known or recognized* by the employee as reasonable.

According to the comments to criterion (c), an employer's rule may not contain any incentives or disincentives that would cause a reasonable person to not report a workplace injury or illness. For example, a safety program where injury-free employees are eligible for a safety bonus would violate the rule because the bonus is an incentive to not report an injury or illness.

OSHA will consider automatic (blanket) post-injury drug testing a disincentive to reporting injuries and illnesses. Post-accident policies must now require the employer to make a case-by-case assessment of whether the potential use of drugs or alcohol caused the injury.

There had been a temporary injunction issued by a Texas court earlier in 2016. After an initial postponement of parts of the Rule, the court declined to grant a permanent injunction, and the Rule is currently in place. Oregon OSHA adopted the rule November 10, 2016 and shall make it **effective May 1, 2017**. For more information see Oregon OSHA Administrative Order 6-2016.

We recommend employers take the following steps to comply with the new OSHA reporting rules:

- If you do not have an injury and illness reporting procedure, create one.
- Review current safety policies to ensure that they do not provide a disincentive to employees reporting injuries or illnesses. Make sure policies do expressly prohibit discrimination or retaliation against employees who report injuries or illnesses.
- Revise your post-injury drug testing policy to eliminate automatic post-injury drug testing and replace it with a policy that requires a case-by-case assessment of each employee and accident.
- Train supervisors how to identify impaired employees and how to document any incidents that may trigger OSHA reporting.
- Train employees on reporting procedures and emphasize that the employer will not discriminate or retaliate against an employee who reports injuries or illnesses.

Additional information to help employers comply with the new rule:

Local jobsite posting of records:

Employers subject to the recordkeeping requirements must post the OSHA Form 300A, Summary of Work-Related Injuries and Illnesses, from February 1 – April 30, 2017.

- The Form 300A lists the total number of job-related injuries and illnesses that occurred during the previous year
- Must be posted even if no work-related injuries or illnesses occurred during the year
- Should be displayed in a common area where notices to employees are usually posted so that employees are aware of the injuries and illnesses occurring in the workplace.

A company executive must certify that the OSHA 300 Log has been examined and that he or she reasonably believes that the annual summary is correct and complete.

Regarding electronic submittal of records:

OSHA will provide a secure website, scheduled to go live in February 2017, that offers three options for data submission:

1. Manually enter data into a webform
2. Upload a CSV file to process single or multiple establishments at the same time
3. Transmit data electronically via an API (application programming interface).

Establishments with 250 or more employees in industries covered by the recordkeeping regulation must submit information from their 2016 Form 300A by July 1, 2017. These same employers will be required to submit information from all 2017 forms (300A, 300, and 301) by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

Establishments with 20-249 employees in certain high-risk industries must submit information from their 2016 Form 300A by July 1, 2017, and their 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.