

# OSHA Injury and Illness Recordkeeping and Reporting Requirements

OSHA Part 1904

On July 30, 2018 the Occupational Safety and Health Administration (OSHA) issued a Notice of Proposed Rulemaking (NPRM) to eliminate the requirement to electronically submit information from OSHA Form 300 (Log of Work-Related Injuries and Illnesses), and OSHA Form 301 (Injury and Illness Incident Report) for establishments with 250 or more employees that are currently required to maintain injury and illness records. OSHA has preliminarily determined that the (substantial) benefits to worker privacy outweigh the (uncertain) foregone benefits to enforcement.

## SUMMARY:

This proposed rule would amend OSHA's recordkeeping regulation by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301. These establishments will continue to be required to submit information from their Form 300A summaries. OSHA is amending its recordkeeping regulations to protect sensitive worker information from potential disclosure under the Freedom of Information Act (FOIA). OSHA has preliminarily determined that the risk of disclosure of this information, the costs to OSHA of collecting and using the information, and the reporting burden on employers are unjustified given the uncertain benefits of collecting the information. OSHA believes that this proposal maintains safety and health protections for workers while also reducing the burden to employers of complying with the current rule. OSHA seeks comment on this proposal, particularly on its impact on worker privacy, including the risks posed by exposing workers' sensitive information to possible FOIA disclosure. In addition, OSHA is proposing to require covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission.

OSHA proposes this amendment to the 2016 rule to protect worker privacy, having re-evaluated the utility of routinely collecting Form 300 and 301 data. The injury and illness data electronically submitted to OSHA from Form 300A (which submission the 2016 rule requires, and which this proposal would not change) gives OSHA a great deal of information to use in identifying high-hazard establishments for enforcement targeting. To that end, OSHA has designed a targeted enforcement mechanism for industries experiencing higher rates of injuries and illnesses based on the summary data. By contrast, OSHA has provisionally determined that electronic submission of Forms 300 and 301 adds uncertain enforcement benefits, while significantly increasing the risk to worker privacy, considering that those forms, if collected by OSHA, could be found disclosable under FOIA. In addition, to gain (uncertain) enforcement value from the case-specific data, OSHA would need to divert resources from other priorities, such as the utilization of Form 300A data, which OSHA's experience has shown to be useful.

Employers can continue to electronically report their Calendar Year (CY) 2017 Form 300A data to OSHA, but submissions after July 1, 2018 will be flagged as "Late". Remember, not all establishments are covered by this requirement.

Only a small fraction of establishments is required to electronically submit their Form 300A data to OSHA. Establishments that meet any of the following criteria DO NOT have to send their information to OSHA. Remember, these criteria apply at the establishment level, not to the firm as a whole.

- The establishment's peak employment during the previous calendar year was 19 or fewer, regardless of the establishment's industry.
- The establishment's industry is on this list (Non-Mandatory Appendix A to Subpart B -- Partially Exempt Industries), regardless of the size of the establishment.
- The establishment had a peak employment between 20 and 249 employees during the previous calendar year AND the establishment's industry is not on this list.

The proposal does not alter the antiretaliation provisions at 29 CFR 1904.35 and 1904.36, which the agency has interpreted as limiting certain kinds of post-accident drug testing, safety incentive programs, and disciplinary policies.

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