

RiskTopics

OSHA Electronic Recordkeeping Requirements

Zurich Resilience Solutions - Risk Engineering

The stated reason for updating the recordkeeping requirements is to improve tracking of workplace injuries and illnesses through electronic reporting of records, but many issues need to be considered by employers. This RiskTopic provides tips for navigating these issues and the standard.

Introduction

The U.S. Occupational Safety and Health Administration (OSHA) released the "Recording and Reporting Occupational Injuries and Illnesses" regulation on May 12, 2016 (Document citation 81 FR 29623). While most rule changes from OSHA fall under either General Industry or Construction standards (29 CFR 1910 and 29 CFR 1926, respectively), these changes fall under the recordkeeping rules (29 CFR 1904) and apply to all industries unless specifically excluded in the standard. Under these rules, employers are required to electronically report injuries and illnesses to OSHA. Along with electronic reporting, companies must provide employee training on how to report injuries and illnesses. In keeping with the theme of ensuring full reporting, companies need to eliminate barriers to reporting.

On July 17, 2023, the Department of Labor announced a final rule taking effect on January 1, 2024, that requires certain employers in designated high-hazard industries listed in Appendix B to Subpart E of 20 CFR Part 1904 to electronically submit injury and illness information to OSHA.

The required training, removal of these barriers, electronic reporting, and how OSHA plans to use the data have raised some important issues and questions.

Discussion

While the standard went into effect on January 1, 2017, changes to the standard warrant further review of the requirements. The following outline summarizes the OSHA recordkeeping standard (29 CFR 1904) updates:

- Companies with 250 or more employees are required to submit their injury and illness information from the OSHA 300 log, form 301 injury reports, and form 300A summary of injuries/illnesses by uploading the data into an OSHA database. Employers will be required to remove personally identifiable information from the data prior to uploading. This may include employee names, physician names, and names/addresses of medical treatment facilities that are outside of the workplace.

- Some industries are exempt based on 1904 Subpart B Appendix A unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or BLS.
- Companies in certain designated industries, defined in Appendix A of the revised standard, with 20 to 249 employees, will be required to submit the OSHA form 300A summary electronically as well. The list of industries in Appendix A is lengthy, but it does include broad categories such as construction, manufacturing, utilities, and agriculture, along with a number of individual industry groups.
- Companies with 100 or more employees in certain high-hazard industries must electronically submit information from their OSHA 300 log, form 301 injury reports, and form 300A summary of injuries/illnesses to OSHA once a year. Federal Register: Improve Tracking of Workplace Injuries and Illnesses
- Companies are required to establish a reasonable procedure for reporting injuries and illnesses and retrain employees on the procedure. Companies must also eliminate any barriers that may keep an employee from reporting an injury or illness, including retaliation, discharge, or any other action.
- OSHA's stated purpose is to use the data to plan their enforcement and compliance assistance efforts more effectively. OSHA also plans to make the data provided available to the public in much the same manner as they already make their enforcement data public. As such, "OSHA believes that public disclosure will encourage employers to improve workplace safety and provide valuable information to workers, job seekers, customers, researchers, and the general public." ¹

OSHA issued instructions in April 2018 that the electronic reporting requirements apply to all employers nationwide regardless of whether the company/location resides in a Federal OSHA or OSHA state plan state.²

The OSHA data submission portal can be found at:

[Injury Tracking Application \(ITA\) | Occupational Safety and Health Administration \(osha.gov\)](#)

Other requirements

Certain ancillary requirements related to eliminating the barriers to injury reporting went into effect on November 1, 2016. The requirements related to eliminating barriers to injury reporting by employees focus on two main areas: Employees must be informed of their rights to report work-related injuries/illnesses and the procedures for making these reports, and employees cannot be retaliated against in any manner for reporting an injury/illness.

The employer needs to ensure that any program or policy that might discourage reporting is modified. Two specific potential programs/policies are identified in the revised standard:

1. Safety incentive programs and
2. Mandatory post-incident drug testing

Safety Incentive Programs

Companies with safety-related incentive programs will need to review the aspects of their program to ensure that reporting an injury does not adversely impact the possibility of receiving an incentive reward. For example, if a team-based safety incentive is built on a lack of injuries in a department for a certain period of time, then group pressure may act as a barrier to an employee reporting their injury. Incentive programs based on activities or results that are not injury-based, such as completing a certain number of job safety analyses or completing required training, remain acceptable and should not be impacted.

Drug-Free Workplace

Companies can have policies that promote a drug-free workplace. Many times, these policies include a mandatory post-incident (or accident) drug test of involved employees. With this update to the OSHA recordkeeping standard, these mandatory post-incident tests would be considered a deterrent to injury reporting and, as such, forbidden by the standard. For the post-incident drug test to be considered valid, the employee's potential impairment would need to be a contributing factor in the incident or accident.

For example, if the injury involves an employee being struck by an object from above, the injured employee's impairment probably would not contribute to the incident. In this case, a mandatory drug test may discourage the employee from reporting the injury if the employee had reason to be concerned about the test result. In another example, if an employee was injured while ignoring or violating a work rule, such

as by-passing a machinery guard to speed up production, the employee's possible impairment could be a contributing factor to the accident. In this event, the individual's potential impairment is pertinent to the accident, and a mandatory drug test may be justified.

Ideally, only drug test protocols that can quantify and validate impairment are acceptable, such as a blood alcohol test (BAC). Tests that only note the presence of an illegal drug but not its quantity as related to possible impairment would not be acceptable. OSHA advises that currently, only blood alcohol tests are confirmed to show impairment.³ Testing for other drugs may provide useful information and is acceptable as long as the possibility of impairment contributing to the accident is present.

Companies may need to modify their safety incentive programs and workplace drug policies to ensure that these programs do not discourage injury reporting.

Guidance

Here are some strategies that companies can use to address the OSHA recordkeeping standard revisions.

Review your current injury reporting procedures. Injury reporting procedures should be straightforward and not in any way discourage employees from reporting. Usually, policies indicate that employees should report possible workplace injuries to their supervisor as soon as possible. Any potential disciplinary action for late reporting, such as not reporting an injury within 8 hours or 24 hours, would be discouraged under the OSHA standard update. Once reviewed and finalized, all employees should be given refresher training on the procedure for injury reporting.

Evaluate your workplace drug policy. Workplace drug policies that include a required post-incident (or accident) drug test may need to be modified. The revised OSHA standard considers mandatory post-incident drug testing as a possible deterrent to injury reporting. Consider modifying your policy to indicate a post-incident drug test may be required and then establish procedures for personnel investigating incidents, like the supervisor or safety manager, to determine if the circumstances of the incident warrant a drug test due to impairment being a possible contributing factor. Using a member of the human resources staff as a sounding board may provide an additional layer of objectivity. Review testing methodologies with your laboratory to ensure that the methods used will provide the best information possible for your program.

Assess workplace safety incentive programs. Any incentive program that targets workplace injury reductions as a goal will be considered by OSHA as a potential deterrent to injury reporting. Focus incentive criteria on leading indicators such as workplace training completion, positive safety behaviors displayed, proactive hazard reviews/mitigation, safety activity participation, or other non-injury-related activities. These types of criteria are less likely to raise concerns about an injury-reporting deterrent.

Check your current injury recordkeeping procedures. Establishments that have more than 250 workers are required to submit electronically. Determine who will be responsible for collecting and preparing the data for electronic entry. Personal information must be removed from the data, as mentioned previously. If you use an alternate form for injury reporting (other than the OSHA 301 form), such as a state workers' compensation or insurance company form, determine what additional information on the alternate form may need to be removed for the data entry.

Companies with 20–249 employees should check [Appendix A](#) of the OSHA Standard and determine if your industry is included in the list of designated industries. If so, you will need to provide summary data to OSHA.

Conclusion

The changes to the OSHA Recordkeeping Standard, 29 CFR 1904, will require companies to review and revise injury reporting procedures, safety incentive programs, and workplace drug policies and provide training to employees. Additionally, any changes in workplace drug policies should be thoroughly reviewed with human resources and legal counsel familiar with applicable law and the jurisdictions involved.

For more information on Zurich's extensive Risk Engineering and Sustainability services, please contact your Risk Engineer or visit us at [Risk Engineering and Sustainability Services | Zurich Resilience Solutions](#).

References

¹"Final Rule Issued to Improve Tracking of Workplace Injuries and Illnesses. US DOL/OSHA, 12 May 2016. Web. 30 Aug. 2016. <https://www.osha.gov/recordkeeping/finalrule/index.html>.

² Cordaro, Tressi. "OSHA Clarifies That Employers in State Plans Must Submit Injury & Illness Data." *The National Law Review*, Jackson Lewis P.C., 30 Apr. 2018, www.natlawreview.com/article/osha-clarifies-employers-state-plans-must-submit-injury-illness-data.

³"UNITED STATES DEPARTMENT OF LABOR." *Occupational Safety and Health Administration*, US DOL/OSHA19, 19 Oct. 2016, www.osha.gov/recordkeeping/finalrule/interp_recordkeeping_101816.html.

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Gelb, Aaron. "OSHA Issues New Illness and Injury Recordkeeping Rule That Casts Doubt upon Commonplace Employer Drug Testing and Safety Incentive Policies." *VedderPrice* 19 May 2016. Web. 02 Sept. 2016.

Other resources

[Recordkeeping - Final Rule Issued to Improve Tracking of Workplace Injuries and Illnesses | Occupational Safety and Health Administration \(osha.gov\)](#)

[Recordkeeping - Overview | Occupational Safety and Health Administration \(osha.gov\)](#)

[Injury Tracking Application \(ITA\) | Occupational Safety and Health Administration \(osha.gov\)](#)

[Improve Tracking of Workplace Injuries and Illnesses \(osha.gov\)](#)

[Final Rule to Improve Tracking | Occupational Safety and Health Administration \(osha.gov\)](#)

[1904.7 - General recording criteria. | Occupational Safety and Health Administration \(osha.gov\)](#)

[1904 | Occupational Safety and Health Administration \(osha.gov\)](#)

[Department of Labor announces rule expanding submission requirements for injury, illness data provided by employers in high-hazard industries | Occupational Safety and Health Administration \(osha.gov\)](#)

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