

OSHA Electronic Reporting:

OSHA Finalizes Rule on Electronic Reporting, Includes New Injury Reporting Procedure Requirements



OSHA recently finalized a new rule on the electronic reporting of injuries which will affect certain company sizes and industries. In addition to this rule, OSHA has new regulations on injury reporting procedures.

Rules on Electronic Reporting of Injuries:

OSHA recently just finalized a new rule on electronic reporting of injuries which will require certain company sizes and industries to electronically submit their OSHA log data each year. Once this data is submitted, it will be available for public searches similar to the violation/citation data. In the release, OSHA stated that collecting and releasing this information to the public will encourage employers to put more emphasis on their safety programs. This new rule will apply mainly to two groups:

Companies with 250 or more employees:

All companies with more than 250 employees will need to report their injury information on an annual basis.

- » As of July 1, 2017, injury information from the 2016 OSHA 300A form will need to be submitted electronically to OSHA.
- » As of July 1, 2018, injury information from 2017 including the OSHA 300A form, OSHA 300 log and corresponding OSHA 301 forms will need to be submitted electronically to OSHA.
- » Starting 2019, all of that same data (the OSHA 300A form, OSHA 300 log and corresponding OSHA 301 forms) will need to be submitted electronically by March 2. It will be the same data and deadline for every year after that.

Companies with 20-249 employees in certain high-risk industries:

All companies with 20-249 employees in certain industries will need to electronically report their injury information on an annual basis.

- » As of July 1, 2017, information from the 2016 OSHA 300A form will need to be submitted electronically to OSHA.
- » As of July 1, 2018, injury information from the 2017 OSHA 300A form will need to be submitted electronically to OSHA.
- » Starting 2019, all the OSHA 300A forms will need to be submitted electronically by March 2. This will be the same data and deadline for every year after that.

OSHA did release an all-inclusive list of “high-risk” industries that will need to report electronically if they have 20 or more employees. A complete list can be found [here](#) by NAICS code, but the list does include Construction and Manufacturing as whole industries, which encompasses a lot of business across the country. OSHA will be providing a secure website for the submission of the data which will likely be rolled out around the beginning of 2017.

New OSHA Rule Focuses on Injury Reporting Deterrence

This new rule came as a surprise to many, but it turned out to be the additional commentary that was a real shock. Aside from the electronic reporting, the rule also discusses employees’ rights to report injuries without fear of retaliation. Specifically, the three provisions that were included are:

1. Employers must inform employees of their right to report work-related injuries and illnesses free from retaliation. This obligation may be met by posting the OSHA Job Safety and Health — “It’s The Law!” worker rights poster from April 2015 or later.
2. An employer may not retaliate against employees for reporting work-related injuries or illnesses.
3. An employer’s procedure for reporting work-related injuries and illnesses must be reasonable and must not deter or discourage employees from reporting.

In the final rule, effective August 10, 2016, OSHA can now issue citations under the recordkeeping standard to employers for any of the above situations.

The first two amendments are pretty simple overall. OSHA considers an employer’s obligation met of informing their employees of their right as long as they have an OSHA worker rights poster from April 2015 or later posted within the facility. This poster is included in many of the federal/state labor law postings and can also be downloaded and printed for free in a variety of languages [here](#). Finally, not retaliating against employees for reporting injuries has always been a widely known rule and is generally followed by most companies.

Number three is where things get a little bit trickier. In OSHA’s commentary regarding deterrence or discouraging from reporting, they’re focusing specifically on discipline policies, post-incident drug testing and employee incentive programs.

Discipline Policies

While OSHA stated they believe the majority of discipline policies are being correctly used, they’re still seeing cases where employees are seen as being disciplined solely for reporting an injury. Specific examples of this are:

- » Employees who report injuries are disciplined more severely than other employees who worked in the same way and do not get injured.
- » Employees who report injuries are selectively disciplined for violation of vague work rules, such as “work carefully” or “maintain situational awareness.”
- » Employer policies that make employees who report injuries ineligible for promotions.
- » Automatically giving poor performance evaluations to employees who report OSHA-recordable injuries.



Written by:
Lauren Gizzi

Lauren Gizzi is a Safety Supervisor at Assurance with more than ten years of industry experience. An expert in OSHA recordkeeping, safety programming and risk management, she works closely with her clients to establish effective safety programs that achieve measurable results. Lauren attended Roosevelt University and received the following designations: Associate in Risk Management (ARM), Associate in Claims (AIC) and Construction Risk and Insurance Specialist (CRIS), Associate in General Insurance (AINS) and Certified Staffing Professional (CSP).

Progressive discipline policies can still be used post-incident, but they must be in relation to a specific safety rule being broken and applied consistently to all employees.

Post-Incident Drug Testing

Requiring employees to take a drug test after reports of a near miss, injury or incident resulting in property damage is relatively common throughout all industries. However, OSHA is now saying that these policies are being used as a way to discourage reporting when used for incidents where drugs likely were not a contributing factor. Examples of this would be repetitive motion injuries or a bee sting injury where it is clear that drug use would not have been a proximate cause. OSHA has been very clear that they're not banning drug tests completely but instead, trying to limit the use of drug testing to only being a way to help determine injury causes.

In order to comply with these new requirements, companies would likely just need to make a small addition to their policy to state that "Post accident drug testing will be required following an injury report *where drug use is a possible contributing factor...*" or something along those lines to keep the policy focused on incidents where drug testing can't be seen as retaliatory.

A key component to policy revisions such as this is to be as clear as possible regarding which incidents will require drug tests and which ones will not. Additionally, providing training to management and supervisors regarding reasonable suspicion can also alleviate subjectivity when it comes to determining when a drug test will be required. However, it's recommended that you consult with your employment law counsel to ensure the policy doesn't create any potential discrimination.

For situations where post-incident drug testing is required by federal or state laws, such as commercial drivers, drug testing can still be applied to all employees as it is a requirement of the law, not retaliatory.

Employee Incentive Programs

OSHA has always discouraged employee incentive programs that are based on "zero accidents" or "no OSHA recordables," but this new rule makes their stance official. Incentive programs that are based on injury reporting will now fall in violation of the recordkeeping standard as it's seen as discouraging employees from reporting. OSHA is not against safety incentive programs as a whole and does see their value. However, incentive programs will need to focus on more proactive safety measures, such as rewarding reports of near misses, recognition for participating in safety committees or awards for safety suggestions.

Get in Touch

If you have further questions regarding OSHA's new rule or the electronic reporting of injuries, [contact](#) a member of the 'A' team. For information and resources on safety and OSHA, [download](#) our new e-book!