



OSHA TO REQUIRE ELECTRONIC REPORTING OF WORKPLACE INJURIES & ILLNESSES

WR WOODS ROGERS
ATTORNEYS AT LAW

On November 7, 2013, the Occupational Safety and Health Administration issued a proposed rule it says will improve workplace safety and health through improved tracking of workplace injuries and illnesses. The stated purpose of this rulemaking is to improve workplace safety and health through the collection of useful, accessible, establishment-specific injury and illness data to which OSHA currently does not have direct, timely, and systematic access.

OSHA believes with the information acquired through this proposed rule, employers, employees, employee representatives, the government, and researchers will be better able to identify and remove workplace hazards. OSHA plans to eventually post the data online, as encouraged by President Obama's Open Government Initiative. Timely, establishment-specific injury and illness data will help OSHA target its compliance assistance and enforcement resources more effectively by identifying workplaces where workers are at greater risk, and enable employers to compare their injury rates with others in the same industry. Currently, employers cannot benchmark their performance against others in their industry; if fully implemented, this initiative will enable employers to compare their safety records to those at similar facilities. In addition, prospective employees will know which employers have better safety records, helping those employers compete for the most desirable workers.

The rule's provisions requiring regular electronic submission of injury and illness data will give OSHA a much larger database of establishment-specific information about injuries and illnesses in the workplace. This information will help OSHA use its resources more effectively by enabling the Agency to identify the workplaces where workers are at greatest risk. Currently OSHA has access to establishment-specific injury and illness information in a particular year only if the

establishment was inspected, was part of the OSHA Data Initiative (ODI) which was established to gather and compile occupational injury and illness information from establishments in high-hazard industries, and/or reported a fatality or a multiple hospitalization event.

According to the Assistant Secretary of Labor for Occupational Safety and Health, Dr. David Michaels, "This initiative will not result in more OSHA enforcement. But with these data, OSHA will be able to better target our activities, by identifying the employers who most need our free consultants, our educational materials, and our health and safety inspections. This also means we can spend fewer resources, and make fewer inspections, at employers with low injury rates."

The proposal will amend OSHA's recordkeeping regulations to require the electronic submission of injury and illness information employers are already required to keep under OSHA's regulations for recording and reporting occupational injuries and illnesses. The proposed rule amends the regulation on the annual OSHA injury and illness survey of ten or more employees to add three new electronic reporting requirements as described below. The proposed rule does not add to or change any employer's obligation to complete and retain injury and illness records under OSHA's regulations for recording and reporting occupational injuries and illnesses. The proposed rule also does not add to or change the recording criteria or definitions for these records. The proposed rule only modifies employers' obligations to transmit information from these records to OSHA or OSHA's designee.

This proposed rule would amend the regulation on the annual OSHA injury and illness survey of ten or more employers to add three new electronic reporting requirements.

First, the proposal requires large employers, defined as 250 or more employees in the previous year, to electronically report to OSHA or OSHA's designee on a quarterly basis, the data on serious workplace injuries and illnesses that the employers already collect.

Second, smaller employers, defined as 20 or more employees in the previous year that are in certain designated industries, must electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee on an annual basis. OSHA will make the data publically available, on line, after cleaning it of personally identifiable information. This requirement will replace OSHA's annual injury and illness survey, authorized by the current version of the regulation.

Third, OSHA will require all employers who receive notification from OSHA to electronically submit specified information from their Part 1904 injury and illness records to OSHA or OSHA's designee.

OSHA says the proposed rule will support its statutory directive to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources" (29 U.S.C. 651(b)) "by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem" (29 U.S.C. 651(b)(12)).

The public will have 90 days, through Feb. 6, 2014, to submit written comments on the proposed rule. On Jan. 9, 2014, OSHA will hold a public meeting on the proposed rule in Washington, D.C. A Federal Register notice announcing the public meeting will be published shortly.

NOTE: As provided in section 18(c)(7) of the Act, State-Plan States, like Virginia and North Carolina, must adopt requirements identical to those in 29 CFR 1904.41 in their recordkeeping and reporting regulations as enforceable State requirements.

Article brought to you by Steve Burt and Dudley Woody.
If you have questions or need assistance in any OSHA recordkeeping/compliance matter, please contact Dudley (540-983-7683) or Steve (540-983-7750).