

New OSHA reporting and anti-retaliation rules

On May 11, 2016, the Occupational Safety and Health Administration (OSHA) [finalized a rule](#) which will expand employer requirements to record and submit records of workplace injuries and illnesses. The final rule also contains new obligations pertaining to employers' injury-reporting policies.

New reporting obligations

The final rule does not change employers' existing obligation to complete and retain injury and illness records. However, the new rule requires organizations with 250 or more employees which are currently required to keep such records to electronically submit this data to OSHA annually. Specifically, these employers must submit the information that is currently collected on OSHA Forms 300, 300A, and 301. The rule further provides that employers with 20-249 employees in certain identified industries must also electronically submit OSHA Form 300A on an annual basis.

The new rule also provides that data from employer submissions will be posted on a publically accessible website. OSHA has explained that by releasing this data to the public, it hopes to encourage employers to increase their efforts to prevent worker injuries. OSHA further stated that making this data publically available would enable researchers to evaluate the effectiveness of existing injury prevention efforts, and to identify new workplace safety hazards before they can become widespread. OSHA will remove all information which personally identifies employees before the data is made publically accessible.

The rule's reporting requirements become effective January 1, 2017.

New injury-reporting policy obligations

The rule contains three additional employee protections.

1. Employers are required to inform workers of their right to report work-related injuries without fear of retaliation. This obligation may be met by posting the OSHA Job Safety and Health - It's The Law worker rights poster (available [here](#)).
2. Employers are required to maintain a procedure for reporting work-related injuries and illnesses which must not deter or discourage employees from reporting.
3. The final rule establishes whistleblower protections that state an employer may not retaliate against employees for reporting work-place injuries or illnesses.

These requirements mirror the increased enforcement focus the Department of Labor has recently given to workplace injury-reporting policies. For instance, the Secretary of Labor brought suit earlier this year against U.S. Steel for its policy requiring employees to "immediately report" all injuries. The lawsuit alleges that such an "immediate reporting policy" potentially discourages employees from reporting workplace injuries. For instance, if an employee sustained an injury at work, but did not discover the injury for several days, the Department has argued that the employee may be discouraged from reporting the injury, for fear of being disciplined for late reporting. The provisions in the final rule requiring employers to maintain injury-reporting policies which do not discourage employees from reporting seems to be an extension of this enforcement effort.

These provisions will become effective August 10, 2016.

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