

Release of New Proposed Rules: Electronic Submittal of Workplace Injuries and Illnesses to OSHA

On March 30, 2022, the Occupational Safety and Health Administration (OSHA) published new proposed rules regarding electronic recordkeeping requirements. Specifically, OSHA has sought to revise recordkeeping rules related to electronic submittal of injury and illness information to OSHA.

Background

Generally, employers with 10 or more employees are required to keep records of injuries and illnesses at their establishments. Employers keep a log of recordable employee illnesses and injuries on the OSHA Form 300. Employers also prepare an OSHA Form 301, which suits the purpose of offering additional details regarding injuries listed on the Form 300. To further meet an annual summary requirement, employers utilize an OSHA Form 300A that provides a summary of the year's injuries and illnesses and is posted in the workplace. OSHA rules and regulations also currently require electronic submission of illness and injury information to OSHA as described immediately below.

Under current rules, establishments with 250 or more employees in industries generally within the purview of the OSHA recordkeeping requirements and establishments with 20-249 employees in certain designated industries are required to electronically submit to OSHA the information on a Form 300A once a year. The current electronic recordkeeping rules require establishments submitting information to also provide their employer identification number with the submission.

Changes in Proposed Rules

Under the proposed rules, establishments with 20 or more employees in certain designated industries would still be required to submit information to OSHA from their Form 300A once a year. However, the current rule requiring electronic submittal of information from the Form 300A applying to establishments with 250 or more employees, not in a designated industry, would be removed.

In place of the 250-employee rule, establishments with 100 or more employees (at any time during the previous calendar year) operating in designated industries would be required to electronically submit to OSHA information from their Forms 300, 301, and 300A once a year. The proposed rules contain a list of industries applicable to both the 20-employee and 100-employee rule, and OSHA has indicated that it will update the classification system used to determine which industries are covered by the electronic submission requirement. In addition to these changes, OSHA has indicated that it will now require establishments to include their company name when making electronic submissions to OSHA.

Notably, OSHA has indicated that it will post redacted data from the proposed annual electronic submissions on a public website. OSHA will rely on automated software, not human review, to identify and remove information that reasonably identifies workers, including but not limited to applicable physician name and health care facility.

The New Rule Will Enhance Future Enforcement

Employers should be aware that expansion of the electronic recordkeeping requirement by OSHA will allow OSHA to scrutinize workplace safety data more quickly and more accurately which the agency will use in future enforcement activities. However, historically, the electronic recordkeeping requirements have been criticized by employers due to privacy concerns and OSHA has rolled back prior requirements to electronically submit injury and illness data from Forms 300 and 301. Therefore, there will likely be comments submitted during the comment period concerning the



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proposed obligations for establishments with 100 or more employees as well as the usage of automated systems to properly redact specific employee information.

Cozen O'Connor continues to monitor developments in this area. Employers interested in discussing the proposed rules or preparing comments to OSHA regarding the same may contact Cozen O'Connor's Workplace Safety Group.