

# COMPLIANCE BULLETIN

## OSHA Final Rule on Electronic Reporting

### HIGHLIGHTS

- The final rule does not create additional recording requirements.
- Employers with 250 or more employees must submit data from their OSHA 300, 300A and 301 forms.
- Employers with between 20 and 249 employees must submit data from their OSHA 300A forms if they are part of an identified high-risk industry.

### IMPORTANT DATES

#### July 1, 2017

Affected employers must submit data from OSHA Form 300A.

#### July 1, 2018

Some employers must submit data from OSHA Forms 300A, 300 and 301.

#### March 2 (2019 and beyond)

Affected employers must submit required data.

### OVERVIEW

On **May 12, 2016**, the Occupational Safety and Health Administration (OSHA) issued a [final rule](#) requiring certain employers to electronically submit data from their work-related injury records to OSHA. The final rule also solidifies employee anti-retaliation protections for reporting work-related injuries and illnesses.

The final rule becomes effective on **Jan. 1, 2017**, but compliance with anti-retaliation provisions and reporting deadlines will be phased in through **2019**.

### ACTION STEPS

Affected employers should consider the following action steps as a result of the final rule:

- ✓ Become familiar with the requirements in the final rule;
- ✓ Review their recordkeeping and anti-retaliation policies and procedures to ensure they are in compliance with OSHA requirements; and
- ✓ Consider transitioning their OSHA recordkeeping practices to an electronic format once details on how and where to submit electronic information to OSHA have been released.

Provided By:

Baldwin Krystyn Sherman Partners



**BALDWIN**  
KRISTYN SHERMAN

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## Affected Employers

OSHA's final rule on mandatory electronic reporting of occupational injuries and illness data updates OSHA recordkeeping obligations for employers that:

- ✓ Have at least 250 employees; or
- ✓ Have between 20 and 249 employees and are in a high-risk industry (as shown in the table below).

OSHA will collect information on injuries and illnesses to identify emerging hazards, characterize specific areas of concern or target inspection and outreach initiatives under OSHA's emphasis program.

NAICS	Industry
11	Agriculture, forestry, fishing and hunting
22	Utilities
23	Construction
31-33	Manufacturing
42	Wholesale trade
4413	Automotive parts, accessories, and tire stores
4421	Furniture stores
4422	Home furnishings stores
4441	Building material and supplies dealers
4442	Lawn and garden equipment and supplies stores
4451	Grocery stores
4452	Specialty food stores
4521	Department stores
4529	Other general merchandise stores
4533	Used merchandise stores
4542	Vending machine operators
4543	Direct selling establishments
4811	Scheduled air transportation
4841	General freight trucking
4842	Specialized freight trucking
4851	Urban transit systems
4852	Interurban and rural bus transportation
4853	Taxi and limousine service
4854	School and employee bus transportation
4855	Charter bus industry
4859	Other transit and ground passenger transportation
4871	Scenic and sightseeing transportation, land
4881	Support activities for air transportation
4882	Support activities for rail transportation
4883	Support activities for water transportation
7211	Traveler accommodation
7212	RV (recreational vehicle) parks and recreational camps
7213	Rooming and boarding houses

NAICS	Industry
4884	Support activities for road transportation
4889	Other support activities for transportation
4911	Postal service
4921	Couriers and express delivery services
4922	Local messengers and local delivery
4931	Warehousing and storage
5152	Cable and other subscription programming
5311	Lessors of real estate
5321	Automotive equipment rental and leasing
5322	Consumer goods rental
5323	General rental centers
5617	Services to buildings and dwellings
5621	Waste collection
5622	Waste treatment and disposal
5629	Remediation and other waste management services
6219	Other ambulatory health care services
6221	General medical and surgical hospitals
6222	Psychiatric and substance abuse hospitals
6223	Specialty (except psychiatric and substance abuse) hospitals
6231	Nursing care facilities
6232	Residential mental retardation, mental health and substance abuse facilities
6233	Community care facilities for the elderly
6239	Other residential care facilities
6242	Community food and housing, and emergency and other relief services
6243	Vocational rehabilitation services
7111	Performing arts companies
7112	Spectator sports
7121	Museums, historical sites, and similar institutions
7131	Amusement parks and arcades
7132	Gambling industries
7223	Special food services
8113	Commercial and industrial machinery and equipment (except automotive and electronic repair and maintenance)
8123	Dry-cleaning and laundry services

This Compliance Bulletin is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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## Submitting Electronic Data

The final rule requires certain employers to electronically submit the injury and illness information they are already required to keep under existing OSHA regulations. The data an employer must submit and the timeline for submitting this information to OSHA depends on the employer's size.

Employers in high-risk industries with between 20 and 249 employees will be required to submit some information from their OSHA Form 300A. Employers with 250 or more employees will be required to submit information from their OSHA Forms 300A, 300 and 301. However, employers with 250 or more employees have an additional year to file data from their 300 and 301 forms.

During 2017 and 2018, the final rule requires employers to submit required information by July 1. For 2019 and beyond, employers will be required to submit required information by March 2.

Submission Deadline	Number of Employees	
	250 or more	Between 20 and 249
July 1, 2017	Form 300A	Form 300A
July 1, 2018	Forms 300A, 300, 301	Form 300A
March 2 (2019 and beyond)	Forms 300A, 300, 301	Form 300A

## Employee Privacy

The final rule allows OSHA to publicize the electronic data it collects from employers on a public website. The public may use this information to learn about the safety and health hazards associated with working for certain employers. For this reason, the final rule also stipulates that certain personal identifying information must be omitted from electronic submissions mentioned above. Specifically employers should **not** submit:

- ✓ Information from **Column B** ("Employee name") on OSHA Form 300
- ✓ Information from **Field 1** ("Employee name"), **Field 2** ("Employee address"), **Field 6** ("Name of physician or other health care professional") or **Field 7** ("If treatment was given away from the worksite, where was it given?") on OSHA Form 301.

## Anti-discrimination Provisions

The final rule contains three new provisions aimed at strengthening employee anti-retaliation protections, which become effective on **Aug. 10, 2016**. These provisions:

- ✓ Require employers to inform employees of their right to report work-related injuries and illnesses free from retaliation;
- ✓ Clarify that work-related injury and illness reporting methods must be reasonable and should not deter or discourage employees from reporting health and safety incidents; and
- ✓ Prohibit employers from retaliating against employees for reporting work-related injuries or illnesses.

## More Information

Contact Baldwin Krystyn Sherman Partners or see the OSHA [web page](#) on the tracking of workplace injuries and illnesses for more information.