

OSHA Finalizes New Workplace Injury Reporting Rule

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(By Paul Clouser on May 11, 2016 Posted in Workers' Compensation)

On May 11, 2016, the Occupational Safety and Health Administration ("OSHA") finalized a recordkeeping and reporting rule that will require covered employers to take the additional step of electronically submitting to OSHA, injury and illness information that is required to be maintained under existing OSHA regulations. The rule becomes effective January 1, 2017.

The new electronic submission requirement applies to: (a) employers with 250 or more employees who are currently required to keep OSHA injury and illness records (i.e. OSHA forms 300, 300A and 301) and (b) employers with 20-249 employees in certain industries with historically high rates of occupational injuries and illnesses. The electronic submission requirements do not alter the employer's obligation to complete and retain injury and illness records, as before. For illnesses and injuries occurring in 2017, the electronic submission deadline is July 1, 2017.

Believe it or not, OSHA plans to post the injury and illness data it collects on its public website (www.osha.gov). OSHA has indicated that it will remove any personally identifiable information ("PII") before making the data available to the public. States that operate their own job safety and health programs (i.e. OSHA state plans) must adopt requirements that are substantially identical to the new rule within six (6) months.

The new requirements introduce a public watchdog role. Apparently, this role is being added in response to the near doubling of the number of workplaces in the U.S. from 1981 to the present, and the corresponding decrease in the ratio of OSHA inspectors, to one per 4300 workplaces (according to a study by the Center for Effective Government).

The rule also bars employers from retaliating against workers for reporting workplace injuries and incidents, thereby creating a supplemental avenue for disgruntled workers who are inclined to pursue a wrongful discharge cause of

action, in addition to more traditional workers' compensation claims, for alleged workplace injuries.

The net effect of the rule may be to spur additional employment lawsuits, by making it easier for plaintiff lawyers to mine for accident information.

We will keep you apprised as to further developments, but in the interim, please feel free to contact any member of our Labor and Employment Group, with questions or concerns.