

OSHA AMENDS THE ELECTRONIC REPORTING RULE IN THE MIDDLE OF THE 2019 REPORTING SEASON

Occupational Safety & Health Alert
February 7, 2019

For those employers required to electronically report injury and illness data under 29 C.F.R. § 1904.41(a), the 2019 reporting season for submitting 2018 data is now in full swing. OSHA, however, has changed the rules mid-season by amending section 1904.41 with a final rulemaking published on January 25, 2019. The final rule, however, does not become effective until February 25, 2019, a few days before the reporting season closes on March 2, 2019. So employers who began reporting on the front end of the window that opened on January 2, 2019, may still be subject to the 2017 version of the rule, while employers who submit their information on the back end of the reporting window may find a lower burden under the new rule.

Under the 2017 version of the regulation (effective through February 24, 2019), section 1904.41(a) requires covered employers with 250 or more employees to electronically report information from their OSHA 300, 300A, and 301 forms, and requires employers in certain identified industry categories who have 20-249 employees to report data from the OSHA 301 form. Any employer who is specifically notified that it must electronically report must also do so.

The 2017 version of the rule exempted from electronic submission only the “Employee’s Name” column from the OSHA 300 form, and the employee name and address, physician/other health care professional name, and treatment facility name and address sections of the OSHA 301 form.

The 2019 rulemaking (effective February 25, 2019) does not change which employers are required to report, but it deletes all requirements to submit information from the OSHA 300 and 301 forms. After the new rule takes effect, the electronic submission requirement will be limited to reporting data contained on the OSHA 300A form. So waiting until the new rule comes into effect will lessen the obligation and better protect the data.

The regulatory change was spurred by privacy concerns and the potential for release of personally identifiable information about employees’ injuries and illnesses, and possibly medical treatments, when the agency is faced with Freedom of Information Act requests. OSHA also concluded that any “incremental benefits” of collecting the additional data from the OSHA 300 and 301 forms was “uncertain.” Rather than

Attorneys

Peter Godfrey

Jason Markel

Practices & Industries

Occupational Safety & Health Act
(OSHA)

OSHA AMENDS THE ELECTRONIC REPORTING RULE IN THE MIDDLE OF THE 2019 REPORTING SEASON

wading through and trying to analyze that data, the rulemaking states that OSHA will focus its resources on the 300A data, severe injury reports, and data from initiatives that have been proven useful by past experience in targeting employers and pursuing enforcement activities.

Under either version of the rule, employers are, of course, still required to fully complete and maintain OSHA 300 and 301 forms, which may be reviewed on site during the course of an inspection and should be used by employers as a tool to improve safety and health programs in their establishments.

The 2019 rulemaking also adds a new requirement for reporting employers to provide their Employer Identification Number (EIN) for the establishment being reported. OSHA concluded that using the EIN as a uniform identifier will help it match data with the data collection efforts of the Bureau of Labor Statistics, thereby increasing the accuracy and utility of the collected information.

If you have questions about this alert, you may reach out to Jason Markel, the Hodgson Russ OSHA Compliance Capabilities Practice Leader. If you received this alert from a third party or from visiting our website, and would like to be added to our OSHA mailing list or any other of our mailing lists, please visit us at: <https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications..html>.