



OSHA Issues Final Rule on Electronic Recordkeeping and Drug-Testing & Incentive Programs

Background

The Occupational Safety and Health Administration (OSHA) recently released a final rule regarding electronic reporting of work-related illnesses and injuries. This rule contains three components. The ruling 1) amends electronic recordkeeping rules for certain employers, 2) clarifies OSHA's position on post-incident drug testing and incentive programs, and 3) confirms that certain workplace injury data can be used to increase the scope of an on-site inspection. The ruling takes effect on February 25, 2019.

Changes to 300 Form electronic recordkeeping

OSHA requires employers with more than 10 employees, which are not classified as a Partially Exempt Industry, to record work-related injuries on three separate OSHA forms:

- 300 (a log of work-related injuries),
- 301 (additional details about these work-related injuries), and
- 300A (a summary report of work-related injuries in a calendar year).

In 2016, OSHA amended its rules to require some employers to electronically submit their information TO OSHA once a year. OSHA has since provided a final rule effective on February 25, 2019, stating that employers with 250 or more employees no longer have to submit OSHA 300 and 301 forms electronically on a yearly basis. However, this rule does not apply to the 300A summary reports. Employers with 250 or more employees, and those with 20 or more employees in certain industries, must still submit the 300A summary reports electronically to OSHA by March 2 of the following calendar year.

Anti-retaliation for drug-testing and incentive programs

The final rule reinforced OSHA's prior position on post-incident drug-testing and incentive programs. OSHA does not ban post-incident drug testing and incentive programs. An example of an incentive program would be rewarding workers for reporting near-misses or hazards, such as a bonus at the end of an injury-free month. Incentive programs and drug testing in the event of an incident encourage involvement in safety policies and promote workplace safety and health. However, OSHA reinforced the anti-retaliation provision of the reporting rule. This provision states that implementing drug-testing and incentive programs is prohibited when used as retaliation to workers for reporting injuries or illnesses, rather than for a legitimate purpose.

300 forms may expand on-site inspections

The final rule also reinforced OSHA's position on recordkeeping regarding on-site inspections. Forms 300 and 301 logs of work-related injuries can be used to identify potential violations during an inspection. Despite a recent ruling by the 11th Circuit Court of Appeals stating that OSHA 300 forms cannot be used to expand the scope of an inspection, OSHA asserts that that this ruling was limited to the data from 300A logs. This is a sign that OSHA does not intend to be restricted by this court's ruling.



Employer next steps

1. All employers must follow OSHA reporting rules because violations can result in significant fines.
2. Employers with 250 or more employees no longer need to submit their 300 and 301 forms electronically to OSHA.
3. Employers with 250 or more employees and those with 20 or more employees in certain industries must still report 300A forms electronically as this requirement has not changed.
4. Employers should only implement post-incident drug testing and incentive programs to promote workplace safety and never as retaliation.
5. In the event of an on-site inspection, review OSHA 300 and 301 forms as these incidents may open up the inspection to further areas.

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