

Legal Sidebar

OSHA Rule Makes Workplace Injury and Illness Data Publicly Available

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On May 11, 2016, the Occupational Safety and Health Administration (OSHA) issued a final [rule](#) that will make the data that certain employers collect on workplace injuries and illnesses publicly available. The rule does not appear to require employers to collect new data on workplace injuries and illnesses. Rather, in relevant part, the rule obligates employers to disclose to OSHA the workplace injury and illness data that they already collect under the Occupational Safety and Health Act (OSH Act) and its implementing regulations. OSHA will make this data publicly available online. The rule may be of interest to Congress because of disagreement expressed by some over releasing such data to the public. In promulgating the rule, OSHA observed that it may improve workplace safety by allowing “employers, employees, employee representatives, the government, and researchers” to be “better able to identify and mitigate workplace hazards.” However, opponents of the rule have [expressed concerns](#) that, among other things, it could mislead the public, reasoning that past employee injuries are not a reliable benchmark of a business’ current workplace safety performance or program.

The OSH Act gives OSHA fairly broad [authority](#) to require employers to keep records of workplace injuries and illnesses. Pursuant to this authority, OSHA regulations instruct employers with [11 or more](#) employees to maintain injury and illness records unless the employer is in [a partially exempt industry](#), meaning one of the low-hazard retail, service, finance, insurance, or real estate industries identified in [relevant regulations](#). However, even if an employer has 10 or fewer employees or is in a partially exempt industry, it [must](#) maintain workplace injury and illness records when informed, in writing, that OSHA will be collecting records from the employer as part of its annual injury and illness survey. Records must document all [new, work-related](#) injuries or illnesses [resulting](#) in “death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness,” along with any significant ailments diagnosed by a medical professional. Records are generally kept through three primary OSHA Forms—one creates an “incident report” of a particular injury or illness (Form 301), another aggregates and logs all injuries and illnesses (Form 300), and the last provides annual summaries of injuries and illnesses (Form 300A).

The rule does not appear to mandate that employers maintain records if they were not previously required to do so, nor does it change what injuries and illnesses must be recorded. However, the rule does change employer obligations to report records to OSHA. Prior to the issuance of the rule, OSHA could obtain the information contained on employer recordkeeping forms through [inspections](#) or by [selecting](#) an employer to participate in its annual survey. However, under the rule, employers that must keep workplace injury and illness records are required to submit information from certain records to OSHA electronically, though this information varies with employer size. Specifically, employers that had 250 or more employees at any point in the previous calendar year must submit information from Form 300, Form 300A, and Form 301 to OSHA once per year. Employers that had 20 or more, but fewer than 250, employees in the previous calendar year are required to transmit information from Form 300A on a yearly basis. Finally, all employers, regardless of size, have to submit information from any records sought by OSHA upon the agency’s request.

Data submitted under the rule will be made publicly available through OSHA’s website (www.osha.gov). However, OSHA’s publication of data will be limited in part by any applicable federal laws, including the Freedom of Information Act. Additionally, in promulgating the rule, OSHA clarified that it does not intend to publicly release any personally identifiable information (e.g., employee names or Social Security Numbers) that may be found on the

recordkeeping forms.

Notably, the OSH Act [allows](#) states to control occupational safety and health regulation through state plans, which must be approved by OSHA. State plan approval is contingent upon, among other things, a plan providing health and safety protection that is at least as adequate as the protections provided by OSHA. If OSHA approves a state plan, the state plan's obligations apply in lieu of OSHA standards and regulations. Thus, the rule would not apply directly in states wherein occupational safety and health is regulated under a state plan. However, the rule addresses this, noting that "State-Plan States must adopt requirements identical to those in [the rule]"

In relevant part, the rule becomes effective on January 1, 2017.

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