



New OSHA Recordkeeping Reporting Rule

The new rule, which takes effect August 10, 2016, requires certain employers to electronically submit injury and illness data that they are already required to record on their onsite OSHA Injury and Illness forms. Analysis of this data will enable OSHA to use its enforcement and compliance assistance resources more efficiently. Some of the data will also be posted to the OSHA website.

Compliance schedule

The new reporting requirements will be phased in over two years: Establishments with **250 or more employees** in industries covered by the recordkeeping regulation must submit information from their A 2016 Form 300A by July 1, 2017. These same employers will be required to submit information from all 2017 forms (300A, 300, and 301) by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

Establishments with **20-249 employees** in certain high-risk industries must submit information from their 2016 Form 300A by July 1, 2017, and their 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

I have had several questions recently related to OSHA's position that employers could not drug test since OSHA considers it retaliation. I confirmed with the local OSHA area office that as long as the employer is doing the BWC DFSP or they have a drug testing process or policy and it is administered consistently, OSHA would not have a problem. OSHA also related that they have been working with their national office to update this directive. This should be a consideration for Ohio only for now. Other state's area offices may have a different "take."

Anti-retaliation protections

The rule also prohibits employers from discouraging workers from reporting an injury or illness. The final rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses. One way for employers to meet this requirement is by posting the OSHA "It's The Law" worker rights poster from April 2015 or later. Employers also must establish a reporting procedure that does not deter or discourage an employee from reporting work-related injuries and illnesses.

OSHA Delaying Enforcement of Retaliation Provision

OSHA is delaying enforcement of the anti-retaliation provisions in its new injury and illness tracking rule to conduct additional outreach and provide educational materials and guidance for employers. Originally scheduled to begin Aug. 10, 2016, enforcement will now begin Nov. 1, 2016. Under the rule, employers are required to inform workers of their right to report work-related injuries and illnesses without fear of retaliation; implement procedures for reporting injuries and illnesses that are reasonable and do not deter workers from reporting; and employers are prohibited from retaliating against workers for reporting injuries and illnesses.