New OSHA Recordkeeping & Reporting Requirements

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OSHA’s NEW REPORTING EXPLAINED

WORKER IS INJURED

WAS IT FATAL?

NO

YES

REPORT TO OSHA WITHIN 8 HOURS

WAS THE WORKER ADMITTED TO A HOSPITAL?

NO

YES

WAS THERE AN AMPUTATION?

NO

YES

REPORT TO OSHA WITHIN 24 HOURS

WAS SOMEONE LOSE AN EYE?

NO

YES

NO REPORT REQUIRED

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HOW DO I REPORT?

Call 1-800—321-OSHA (6742) or your local OSHA office
Report online at www.osha.gov/report_online
Severe Injury Reporting 2015

The “Volks Decision”

Improved Tracking of Workplace Injuries & Illnesses
Severe Injury Reporting 2015
I am an employer under OSHA's jurisdiction. What severe injury and illnesses/fatalities will I have to report to OSHA as of January 1, 2015?

You must report the following to OSHA:

1. Any employee fatality as a result of a work-related incident.
2. Any in-patient hospitalization of one or more employees as a result of a work-related incident.
3. Any employee amputation as a result of a work-related incident.
4. Any employee loss of an eye as a result of a work-related incident.
When do I have to report these work-related fatalities and severe injuries/illnesses?

1. You must report the fatality within 8 hours of finding out about the fatality.
2. You must report any in-patient hospitalization of one or more employees, amputation, or loss of an eye within 24 hours of finding out about the event.
Under the final rule, if the employer does not learn about a reportable event right away, the employer must make the report within eight hours for a fatality, or twenty-four hours for an in-patient hospitalization, amputation, or loss of an eye, of the time the event is reported to the employer (see Section 1904.39(b)(7) of the final rule).
An employee suffers a work-related injury (the work-related incident) at 9:00 a.m., and dies from that injury at 10:00 a.m., and the employer or the employer's agent(s) learn of the fatality (the reportable event) at 10:00 a.m.,

The employer is required to report the fatality (the reportable event) to OSHA within eight hours of the fatality (the reportable event) -- i.e., 6:00 p.m.
If an employee is fatally injured as the result of a work-related incident at 8:30 p.m. on Monday, but the employer or employer's agent(s) do not learn of the fatality (the reportable event) until 9:00 a.m. the next day (Tuesday),

The employer would be required to report the fatality (the reportable event) to OSHA within eight hours of learning of the fatality (the reportable event)—i.e., by 5:00 p.m. on Tuesday.
If an employee suffers a work-related injury (the work-related incident) at 11:00 a.m. on Thursday and is hospitalized as an in-patient, as a result of that injury, at 3:00 p.m., and the employer or the employer's agent(s) learn of the in-patient hospitalization for the injury at 3:00 p.m.,

The employer would be required to report the in-patient hospitalization (the reportable event) within 24 hours of the in-patient hospitalization (the reportable event)—i.e., by 3:00 p.m. on Friday
What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the workplace incident?

If a fatality occurs within 30 days of the work-related incident, or if an in-patient hospitalization, amputation, or loss of an eye occurs within 24 hours of the work-related incident, then you must report the event to OSHA. If the fatality occurs after more than 30 days of the work-related incident, or if the in-patient hospitalization, amputation, or loss of an eye occurs after more than 24 hours after the work-related incident, then you do not have to report the event to OSHA. However, you must record the event on your OSHA injury and illness records, if you are required to keep OSHA injury and illness records.

Do not report deaths which occur more than 30 days of the workplace incident

Do not report in-patient hospitalization, amputation, or loss which occur more than the 24 hours after workplace incident

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How do I report these events to OSHA?

You have three options for reporting the event:

1. By telephone to the OSHA Area Office nearest to the site of the work-related incident. Information about OSHA Area Offices.
2. By telephone to the 24-hour OSHA hotline (1-800-321-OSHA or 1-800-321-6742).
3. Electronically, using the event reporting application that will be located on OSHA’s public website.
If the Area Office is closed, may I report the fatality, in-patient hospitalization, amputation, or loss of an eye by leaving a message on OSHA's answering machine, faxing the Area Office, or sending an e-mail?

No, if the Area Office is closed, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye using either the 800 number (1-800-321-OSHA or 1-800-321-6742) or the reporting application located on OSHA's public website.
What information do I have to give to OSHA when I report the fatality, in-patient hospitalization, amputation, or loss of an eye?

You must give OSHA the following information for each fatality, in-patient hospitalization, amputation, or loss of an eye:

1. The establishment name;
2. The location of the work-related incident;
3. The time of the work-related incident;
4. The type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye);
5. The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
6. The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
7. Your contact person and his or her phone number; and
8. A brief description of the work-related incident.
I don't have to keep OSHA records because my company has fewer than 11 employees. Do I still have to report these events?

Yes, all employers under OSHA jurisdiction must report fatalities, in-patient hospitalizations, amputations and losses of an eye to OSHA, even if they are exempt from routinely keeping OSHA records.
Yes, all employers under OSHA jurisdiction must report fatalities, in-patient hospitalizations, amputations and losses of an eye to OSHA, even if they are exempt from routinely keeping OSHA records.
Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it resulted from a motor vehicle accident on a public street or highway?

If the motor vehicle accident occurred in a construction work zone, then you must report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA. If the motor vehicle accident occurred on a public street or highway, but not in a construction work zone, then you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA. However, you must record the event on your OSHA injury and illness records, if you are required to keep OSHA injury and illness records.
Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it occurred on a commercial or public transportation system?

No, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, you must record the event on your OSHA injury and illness records, if you are required to keep OSHA injury and illness records.
Do I have to report a fatality or in-patient hospitalization caused by a heart attack?

If the heart attack is related to a work-related incident, you must report the fatality or in-patient hospitalization. Your local OSHA Area Office director will decide whether or not to investigate the incident.
What if I don't learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away? Or what if I cannot determine that it was work-related right away?

You must report to OSHA within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s) and you determine that it is work-related: 8 hours for a fatality, and 24 hours for an in-patient hospitalization, an amputation, or a loss of an eye.
How does OSHA define "in-patient hospitalization"?

OSHA defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment.
Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing?

No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report each in-patient hospitalization that involves care or treatment.
How does OSHA define "amputation"?

An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions (tissue torn away from the body), enucleations (removal of the eyeball), deglovings (skin torn away from the underlying tissue), scalpings (removal of the scalp), severed ears, or broken or chipped teeth.
Massachusetts Department of Public Health, 696 work-related amputations in 2007-2008 (Ex. 84).

“Some amputations by definition include bone loss, e.g. amputation of finger, foot, hand, but if only the tip of a finger or toe is amputated, involvement of bone loss at time of injury is not necessarily apparent and involves determination by clinical review. Even upon clinical review, bone loss can be ambiguous. In our experience reviewing amputation cases reported by employers on OSHA logs and in workers' compensation claim reports for amputations, bone loss is most often not specified.”
Updates on who must keep OSHA records and who is exempt as of January 1, 2015
What updates does this new rule contain regarding who must keep OSHA records of serious occupational injuries and illnesses?

This new rule establishes an updated list of industries that are partially exempt from the requirement to routinely keep OSHA injury and illness records. The updated list of industries is based on the North American Industry Classification System (NAICS) and injury and illness data from the Bureau of Labor Statistics (BLS) from 2007, 2008, and 2009.

Note: If your company has ten or fewer employees—regardless of the NAICS code—you are partially exempt from routinely keeping injury and illness records.
Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS), unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempt by reason of company size or industry classification, must report to OSHA any workplace incident that results in a fatality, in-patient hospitalization, amputation, or loss of an eye (see §1904.39).

<table>
<thead>
<tr>
<th>NAICS Code</th>
<th>Industry Description</th>
<th>NAICS Code</th>
<th>Industry Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4412</td>
<td>Other Motor Vehicle Dealers</td>
<td>5411</td>
<td>Legal Services</td>
</tr>
<tr>
<td>4431</td>
<td>Electronics and Appliance Stores</td>
<td>5412</td>
<td>Accounting, Tax Preparation, Bookkeeping, and Payroll Services</td>
</tr>
<tr>
<td>4461</td>
<td>Health and Personal Care Stores</td>
<td>5413</td>
<td>Architectural, Engineering, and Related Services</td>
</tr>
<tr>
<td>4471</td>
<td>Gasoline Stations</td>
<td>5414</td>
<td>Specialized Design Services</td>
</tr>
<tr>
<td>4481</td>
<td>Clothing Stores</td>
<td>5415</td>
<td>Computer Systems Design and Related Services</td>
</tr>
<tr>
<td>4482</td>
<td>Shoe Stores</td>
<td>5416</td>
<td>Management, Scientific, and Technical Consulting Services</td>
</tr>
<tr>
<td>4483</td>
<td>Jewelry, Luggage, and Leather Goods Stores</td>
<td>5417</td>
<td>Scientific Research and Development Services</td>
</tr>
<tr>
<td>4511</td>
<td>Sporting Goods, Hobby, and Musical Instrument Stores</td>
<td>5418</td>
<td>Advertising and Related Services</td>
</tr>
<tr>
<td>4512</td>
<td>Book, Periodical, and Music Stores</td>
<td>5511</td>
<td>Management of Companies and Enterprises</td>
</tr>
<tr>
<td>4531</td>
<td>Florists</td>
<td>5611</td>
<td>Office Administrative Services</td>
</tr>
<tr>
<td>4532</td>
<td>Office Supplies, Stationery, and Gift Stores</td>
<td>5614</td>
<td>Business Support Services</td>
</tr>
<tr>
<td>4812</td>
<td>Nonscheduled Air Transportation</td>
<td>5615</td>
<td>Travel Arrangement and Reservation Services</td>
</tr>
<tr>
<td>4861</td>
<td>Pipeline Transportation of Crude Oil</td>
<td>5616</td>
<td>Investigation and Security Services</td>
</tr>
<tr>
<td>4862</td>
<td>Pipeline Transportation of Natural Gas</td>
<td>6111</td>
<td>Elementary and Secondary Schools</td>
</tr>
<tr>
<td>4869</td>
<td>Other Pipeline Transportation</td>
<td>6112</td>
<td>Junior Colleges</td>
</tr>
<tr>
<td>4879</td>
<td>Scenic and Sightseeing Transportation, Other</td>
<td>6113</td>
<td>Colleges, Universities, and Professional Schools</td>
</tr>
<tr>
<td>4885</td>
<td>Freight Transportation Arrangement</td>
<td>6114</td>
<td>Business Schools and Computer and Management Training</td>
</tr>
<tr>
<td>5111</td>
<td>Newspaper, Periodical, Book, and Directory Publishers</td>
<td>6115</td>
<td>Technical and Trade Schools</td>
</tr>
<tr>
<td>5112</td>
<td>Software Publishers</td>
<td>6116</td>
<td>Other Schools and Instruction</td>
</tr>
<tr>
<td>5121</td>
<td>Motion Picture and Video Industries</td>
<td>6117</td>
<td>Educational Support Services</td>
</tr>
<tr>
<td>5122</td>
<td>Sound Recording Industries</td>
<td>6211</td>
<td>Offices of Physicians</td>
</tr>
<tr>
<td>5151</td>
<td>Radio and Television Broadcasting</td>
<td>6212</td>
<td>Offices of Dentists</td>
</tr>
<tr>
<td>5172</td>
<td>Wireless Telecommunications Carriers (except Satellite)</td>
<td>6213</td>
<td>Offices of Other Health Practitioners</td>
</tr>
<tr>
<td>5173</td>
<td>Telecommunications Resellers</td>
<td>6214</td>
<td>Outpatient Care Centers</td>
</tr>
<tr>
<td>5179</td>
<td>Other Telecommunications</td>
<td>6215</td>
<td>Medical and Diagnostic Laboratories</td>
</tr>
<tr>
<td>5181</td>
<td>Internet Service Providers and Web Search Portals</td>
<td>6244</td>
<td>Child Day Care Services</td>
</tr>
</tbody>
</table>
Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company?

The partial industry classification exemption applies to individual business establishments. If your company has several establishments that perform different business activities, some of your company’s establishments may be required to keep records, while others may be partially exempt.
Will OSHA make available guidance on how to fill out the OSHA records for those new to injury and illness recordkeeping?

Yes, OSHA already provides guidance for completing the forms on OSHA’s recordkeeping page. A good place to start is the tutorial.
Brief Tutorial on Completing the Recordkeeping Forms

The format of the tutorial is a slide presentation with voiceover that plays on the web. The complete presentation runs about 15 minutes — however, you can exit at any point and upon returning you will be reminded of where you left off.

Launch Tutorial

Technical note: The presentation operates using MacroMedia Flash technology. Browsers typically include the Flash player as a plugin. As necessary, you will be prompted for the plugin itself or for a version update.

508 Accessibility: After launching the tutorial, select the Links/Accessibility item in the top panel to access a 508 accessible html or PDF* version of the presentation.

Additional Resources

Downloadable presentation source file:
- PPTX* 3.8 MB
- PPT* 9.7 MB

*Accessibility Assistance: Contact OSHA's Directorate of Evaluation and Analysis at (202) 693-2400 for assistance accessing PDF, PPT, and PPTX documents.
Brief Tutorial on Completing the OSHA Recordkeeping Forms

Welcome to the Agency’s tutorial on completing OSHA recordkeeping forms.
OSHA instituted the new reporting program to:

- Better target the Agency’s **compliance assistance and enforcement efforts** in places where workers are at greatest risk
- Engage more **high-hazard employers** in identifying and eliminating serious hazards
RAPID RESPONSE INVESTIGATION (RRI)

- Collaborative, problem-solving approach
- Invites an employer and an OSHA Area Office expert to work together toward shared goal:

  Find and fix hazards, and improve overall safety
Year One of OSHA’s Severe Injury Reporting Program: An Impact Evaluation

By David Michaels, PhD, MPH
Assistant Secretary of Labor for Occupational Safety and Health

Every year, tens of thousands of men and women across the United States are severely injured on the job, sometimes with permanent consequences to themselves and their families.

But until last year, the Occupational Safety and Health Administration (OSHA) lacked timely information about where and how most of those injuries were occurring, limiting how effectively the agency could respond. Too often, we would investigate a fatal injury only to find a history of serious injuries at the same workplace. Each of those injuries was a wake-up call for safety that went unheeded.

Now, under a requirement that took effect Jan. 1, 2015, employers must report to OSHA within 24 hours any work-related amputation, in-patient hospitalization, or loss of eye. (The requirement to report a fatality within 8 hours was unchanged.) Injuries may be reported directly to an OSHA field office, to the OSHA toll-free number, or via an online form. Details are available at www.osha.gov/report.html. OSHA instituted the new reporting requirements to:

1. Enable the agency to better target compliance assistance and enforcement efforts to places where workers are at greatest risk, and;
2. Engage more high-hazard employers in identifying and eliminating serious hazards.

Experience in the field and data from more than 10,000 reports of severe injuries tell us that both goals are being met. We are confident that the events triggered by these reports have eliminated the potential for many more thousands of injuries in U.S. workplaces.
Severe Injury Reporting:

YEAR ONE FINDINGS

- **10,388** severe injuries reported, including **2,644** amputations and **7,636** hospitalizations
- This is an average of **30** worker injuries every day of the year
- Most reported injuries (**62%**) were addressed by **employer investigation**, not OSHA inspection
Severe Injury Reporting:

YEAR ONE FINDINGS

<table>
<thead>
<tr>
<th>Injury types</th>
<th>RRI</th>
<th>Inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amputation</td>
<td>41.34%</td>
<td>58.66%</td>
</tr>
<tr>
<td>Hospitalization</td>
<td>69.46%</td>
<td>30.54%</td>
</tr>
<tr>
<td>Total</td>
<td>62.13%</td>
<td>37.87%</td>
</tr>
</tbody>
</table>
The “Volks Decision”

Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness
The new rule, **effective Jan 18, 2017** allowed OSHA to issue citations to employers for the failure to record an injury or illness up to six months following the required five-year record retention period.

Each injury or illness, discovered through complaint or employee interview, that was unrecorded could be cited and cited **for every day it continued**.
In 2006, OSHA cited Volks Constructors because past injuries had not been recorded — many by nearly five years. Memories had faded, documents were lost, the company’s previous recordkeeper had died, making it practically impossible to defend.

With OSHA’s definition of “restricted” (in 29 C.F.R. § 1904.7(b)(4)(ii)), the company would have to reconstruct movements of particular employees during certain weeks as far back as five years to determine whether they had climbed a ladder more than once a week.
Instead of seeking further review from the D.C. Circuit or the Supreme Court, OSHA did what the court said it could not do—it tried to reach the same rejected result by merely amending its regulations. The amended regulations purported to “clarify” that the duty to have correct logs continued throughout the five-year retention period.
Congressional Challenge

* Congressional Review Act
* 30 day look-back
  * Last used for 1990 for Ergonomic Rule
  * Just used again with Volks decision.

President Trump canceled the rule by signing the legislation voted on by Congress along party lines.
Improved Tracking of Workplace Injuries & Illnesses
Changes coming

Final Rule to Improve Tracking of Workplace Injuries and Illnesses

The new rule, effective Jan. 1, 2017, requires certain employers to electronically submit injury and illness data.

OSHA believes that public disclosure will encourage employers to improve workplace safety and provide valuable information to workers, job seekers, customers, researchers and the general public.

OSHA will provide a secure website that offers three options for data submission. First, users can manually enter data into a webform. Second, users can upload a CSV file to process single or multiple establishments at the same time. Last, users of automated recordkeeping systems will have the ability to transmit data electronically via an API (application programming interface).
The rule prohibits employers from discouraging workers from reporting injury or illness.

Requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation.

Clarifies the existing 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 keeps the existing 11c protection on retaliating against employees for reporting work-related injuries or illnesses.

Establishments with 250 or more employees must submit information from their 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, 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, must be submitted by March 2.

**NOW EXTENDED TO DECEMBER 1 2017**
Establishments in the following industries with 20 to 249 employees must submit injury and illness summary (Form 300A) data to OSHA electronically

<table>
<thead>
<tr>
<th>NAICS</th>
<th>Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Agriculture, forestry, fishing and hunting</td>
</tr>
<tr>
<td>22</td>
<td>Utilities</td>
</tr>
<tr>
<td>23</td>
<td>Construction</td>
</tr>
<tr>
<td>31-33</td>
<td>Manufacturing</td>
</tr>
<tr>
<td>42</td>
<td>Wholesale trade</td>
</tr>
<tr>
<td>4413</td>
<td>Automotive parts, accessories, and tire stores</td>
</tr>
<tr>
<td>4421</td>
<td>Furniture stores</td>
</tr>
<tr>
<td>4422</td>
<td>Home furnishings stores</td>
</tr>
<tr>
<td>4441</td>
<td>Building material and supplies dealers</td>
</tr>
<tr>
<td>4442</td>
<td>Lawn and garden equipment and supplies stores</td>
</tr>
<tr>
<td>4451</td>
<td>Grocery stores</td>
</tr>
<tr>
<td>4452</td>
<td>Specialty food stores</td>
</tr>
<tr>
<td>4521</td>
<td>Department stores</td>
</tr>
<tr>
<td>4529</td>
<td>Other general merchandise stores</td>
</tr>
<tr>
<td>4533</td>
<td>Used merchandise stores</td>
</tr>
</tbody>
</table>
Changes coming

POST ACCIDENT DRUG TESTING

The New Rule’s Key Provisions

- First, a blanket, post-accident drug testing policy likely would be considered illegal by OSHA under the new rule.
- Second, an employer's internal procedures for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting.
- Finally, an employer may not award incentives based on the number of injuries or illnesses that are reported or occur during a certain period of time (e.g., a cash prize raffle if no recordable injuries take place) because such practices may deter the reporting of such incidents.
“OSHA believes that public disclosure will encourage employers to improve workplace safety and provide valuable information to workers, job seekers, customers, researchers and the general public”.
OSHA notes that many circumstances that lead to a recordable work-related injury or illness are "beyond the employer's control." Nevertheless, because such an injury or illness was caused, contributed to, or significantly aggravated by an event or exposure at work, it must be recorded on the OSHA form.

This approach is consistent with the no-fault recordkeeping system OSHA has historically adopted, which includes work-related injuries and illnesses, regardless of the level of employer control or non-control involved. The concept of fault has never been a consideration in any recordkeeping system of the U.S. Department of Labor.

Both the Note to Subpart A of the final rule and the new OSHA Form 300 expressly state that recording a case does not indicate fault, negligence, or compensability. In addition, OSHA recognizes that injury and illness rates do not necessarily indicate a lack of interest in safety and health or success or failure per se. OSHA feels it is to the benefit of all parties to go beyond the numbers and look at an employer's safety and health program.
Jack and Jim arm-wrestle in the breakroom and Jim suffers a torn ligament.
Jane is struck and killed by a drunk driver while driving to collect office supplies.
Jerry, after being told he has to work Saturday, slams his fist on the desk and breaks his pinky.

RECORDABLE???
Legal Challenge
Texas Federal court has delayed a decision on the legality of OSHA’s electronic recordkeeping rule. The court’s stay delays the case until June 5, 2017. DOL – and the industry groups contesting the rule have until July 5, 2017 to propose a summary judgment briefing schedule. DOL - has until July 5, 2017 to respond to requests from public and industrial health organizations to intervene in the case.

EXTENDED UNTIL DECEMBER 1 2017
Questions?