

OSHA Proposes Expanding Electronic Recordkeeping Rule to Add Smaller Employers

By

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The Occupational Safety and Health Administration (OSHA) has published a [proposed rule](#) to restore and expand [Obama-era requirements](#) for high-hazard employers with at least 100 employees to submit their injury and illness forms electronically to the agency.

In 2016, OSHA promulgated an electronic recordkeeping rule, [Improve Tracking of Workplace Injuries and Illnesses Rule](#), which required employers with establishments of at least 250 employees to electronically submit their OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) to OSHA, unless they are exempted from maintaining these documents. Employers challenged the rule because of concerns that information about individuals' injuries and illnesses would be made public and that the agency would use the electronic records to publicly shame employers by publishing their injury and illness records on OSHA's website, which could be viewed by news media, unions, industry competitors, and the public.

As a result of the privacy concerns with electronic submission of the OSHA Form 300 and OSHA Form 301, in 2018, the Trump Administration modified the original rule to require employers to electronically submit only summary data on OSHA Form 300A (Summary of Work-Related Injuries and Illnesses).

The proposed rule not only seeks to return to the rule as originally promulgated in 2016, but it would expand the number of employers that must comply with it by dropping the threshold number of employees from 250 to 100 and by updating the list of employers that are designated in high-hazard industries based on their industry code categorized by the North American Industry Classification System (NAICS). The rule would include two separate lists of employers that are required to electronically submit workplace injury information. Appendix A will be updated to identify high-risk designated industries using the 2017 NAICS. Employers with more than 20 employees would be required to submit their Form 300A if they are on this list. Appendix B would be a new list designed to identify employers with at least 100 employees that have had a three-year average rate of recordable cases of at least 3.5 cases per 100 full-time employees. Employers included in Appendix B will be required to submit certain information from Forms 300, 301, and 300A once a year. All employers on Appendix A are included in Appendix B.

If finalized, the 2022 rule would reverse the 2018 rollback of the proposal limiting electronic reports to summary data only by reinstating the requirement to provide the more detailed injury and illness data in OSHA Forms 300 and 301. The reports will be required even when employers have complied with OSHA standards, and employers will have to identify themselves on reports by name. Addressing previously raised privacy concerns in its proposal, OSHA said, "[R]ecent advancements in technology [that] have reduced the risk that information that reasonably identifies individuals directly, such as name and contact information, will be disclosed to the public." The agency said it hopes that expanding the electronic reporting mandate will provide analysis of "establishment-specific, case-specific

injury and illness data” that will enable the agency to focus compliance efforts on particular employers and industries. OSHA confirmed that it intends to make aspects of the information publicly available.

Employers and other interested stakeholders may submit comments through May 31, 2022, online using Docket No. OSHA-2021-0006 in the [Federal eRulemaking Portal](#).

If you have questions or need assistance in an OSHA matter, please reach out to a member of the [Workplace Safety and Health Practice Group](#).

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