

Facilities, Construction and Property Practice Group

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# AALRR Alert



## Federal OSHA Issues Final Rule for Electronic Submission of Injury and Illness Records

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The federal Occupational Safety and Health Administration (“OSHA”) has adopted new requirements for recording and submitting records of workplace injuries and illnesses. For decades, employers have tracked employee injuries and illnesses on an “OSHA Log.” Historically employers in California have maintained the OSHA logs at their establishment and retained these records for five (5) years. With some exceptions, the recorded information was not reported to Cal/OSHA but that will soon change.

Effective January 1, 2017, certain employers will be required to submit the records of workplace injuries and illnesses to OSHA electronically for posting on the OSHA website to “help keep workers safer and make employers, the public, and government better informed about workplace hazards.” According to OSHA, the final rule includes provisions that encourage workers to report work-related injuries or illnesses to their employers and prohibit employers from retaliating against workers making those reports. The rule will provide OSHA

with data to assist it in (1) improving the allocation of compliance assistance to employers who want to improve safety standards and (2) allocating enforcement resources by expanding OSHA’s ability to identify, target and remove safety and health hazards.

--> “Public disclosure of the data will ‘nudge’ employers to reduce work-related injuries and illnesses . . .”

According to OSHA, behavioral science suggests that public disclosure of the data will “nudge” employers to reduce work-related injuries and illnesses in order to demonstrate to investors, job seekers, customers, and the broader public that their workplaces are safe and healthy. Currently, employers cannot compare their injury experience with other businesses in their industry; they can only compare their experience to an industry as a whole. The access to the information is intended to encourage employers to improve their safety programs. Finally,

the public access to very large sets of workplace injury data will provide public health researchers unprecedented opportunities to advance fields of injury and illness causation and prevention research.

The reporting requirement applies to (1) establishments with 250 or more employees who currently are required to keep OSHA records and (2) establishments with 20-249 employees classified in select industries, including construction and manufacturing.

--> “Cal/OSHA must adopt requirements substantially identical to the federal requirements.”

Employers must inform employees of their right to report work-related injuries free from retaliation. In addition, the procedure for reporting work-related injuries must be reasonable and not discourage employees from reporting. Finally, employers cannot retaliate against employees for reporting work-related injuries.

States such as California, which operate their own safety and health program, must adopt requirements that are substantially identical to the requirements in this rule within six months after publication. Cal/OSHA has not issued any statements indicating if it will use the federal reporting system or develop its own system in California.