

OSHA REMOVES KEY PROVISIONS OF OBAMA-ERA ELECTRONIC REPORTING RULE

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On January 25, 2019, the Occupational Safety and Health Administration ("OSHA") issued a final rule rescinding controversial requirements from the 2016 Rule to Improve Tracking of Workplace Injuries and Illnesses (the "2016 Rule"). Under the 2016 Rule, which was promulgated during the Obama administration, establishments with 250 or more employees were required to submit information electronically to OSHA from their OSHA Form 300 (Log of Work-Related Injuries and Illnesses), Form 301 (Injury and Illness Incident Report), and Form 300A (Summary of Work-Related Injuries and Illnesses). When the 2016 Rule was issued, industry groups expressed concern that the required filing of Form 300 and Form 301 would harm both employers and employees, since it could lead to the public disclosure of sensitive information, such as descriptions of employee injuries, birth dates of injured employees, and the location where such injuries took place.

OSHA's new rule, which will take effect on February 25, 2019, removes the requirement for workplaces with 250 or more employees to submit data from their OSHA Form 300 and Form 301 electronically. Thus, while employers must still electronically submit the general summary data regarding recordable injuries and illnesses from Form 300A to OSHA, they will no longer be required to submit more detailed information from Form 301 and Form 300, which includes specific descriptions of worker injuries and body parts affected by such injuries. In the text of the final rule, OSHA stated that requiring employers to report such detailed injury and illness data would create a "meaningful risk to worker privacy," including the risk that such information might be publicly disclosed under the Freedom of Information Act.

The electronic recordkeeping provisions of the 2016 Rule became effective on January 1, 2017, with an initial submission deadline of July 1, 2017, for 2016 Form 300A summary data, which was later extended to December 15, 2017. The deadline for electronic submission of more specific injury and illness information from OSHA Forms 300 and 301 was July 1, 2018. However, in a trade release on July 27, 2018, OSHA announced that it was issuing a Notice of Proposed Rulemaking "to better protect personally identifiable information or data that could be re-identified with a particular individual" by removing provisions of the 2016 Rule and further stated that it would not enforce the July 1, 2018 deadline for those two forms while the rulemaking was underway.

Under the new rule, covered employers are still required to file information electronically from OSHA Form 300A by March 2, 2019. OSHA's new rule also requires employers to include their Employer Identification Number with their electronic filing of Form 300A data in order for the Bureau of Labor Statistics to make full use of the information submitted to OSHA. Though the new rule rescinds the requirement to submit the information from OSHA Form 300 and Form 301 electronically, employers must continue to maintain these forms onsite and be ready to produce the forms to OSHA in the event of an inspection. Public health advocacy groups have already

brought a legal challenge to OSHA's final rule rescinding the 2016 Rule, accusing OSHA of violating the Administrative Procedure Act and asking the court to vacate the challenged rule.

Notes:

[1] 84 Fed. Reg. 380; 29 C.F.R. § 1904

[2] U.S. Department of Labor, OSHA Trade Release, The Department of Labor Proposes Rule to Better Protect Personally Identifiable Information (July 27, 2018), <https://www.osha.gov/news/newsreleases/trade/07272018>

[3] Pub. Citizen Health Research Grp. v. Acosta, Civil Action No. 19-cv-166 (D.D.C. January 25, 2019).

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