



Authors



Mark N. Duvall
Principal
(202) 789-6090
mduvall@bdlaw.com

OSHA Issues New Rule on Injury and Illness Reporting and Recordkeeping

OSHA has issued a final rule, effective January 1, 2015, that significantly alters its Injury and Illness Recording and Reporting regulations, 29 C.F.R. Part 1904.¹ First, the rule has revised the requirements for reporting work-related fatalities, injuries, and illnesses — now requiring employers to report *all* in-patient hospitalizations, amputations, and losses of an eye that occur within specified periods after work-related incidents. Second, the rule introduces a new option for employers to report incidents via an electronic form on OSHA's website. Finally, the rule adopts the North American Industry Classification System (NAICS) and updates the list of industries that are partially exempt from the recordkeeping requirements.

This alert explains these rule changes, summarizes pending rulemakings that would require employers to periodically submit records online and to report musculoskeletal disorders, and recaps a recent D.C. Circuit opinion limiting OSHA's enforcement authority in recordkeeping cases.

New reporting requirements for in-patient hospitalizations, amputations, and eye losses

OSHA currently requires employers to report within 8 hours: the death of any employee that occurs within 30 days after a work-related incident, and the in-patient hospitalization of three or more employees that occurs within 30 days after a work-related incident.²

Pursuant to the new rule, OSHA will require employers to report within 24 hours all in-patient hospitalizations, amputations, and losses of an eye that occur within 24 hours of a work-related incident. The fatality reporting requirement remains identical. See the following table:

ABOUT B&D

Beveridge & Diamond's 100 lawyers in seven U.S. offices focus on environmental and natural resource law, litigation and dispute resolution. We help clients around the world resolve critical environmental and sustainability issues, relating to their products and facilities.

Beveridge & Diamond's Occupational Safety and Health Practice provides strategic, business-focused advice to the global chemicals industry. Working alongside our clients' legal, EHS and technical teams, we help resolve critical enforcement, compliance, and regulatory issues relating to their facilities and operations.

Learn more at www.bdlaw.com.

	Current Rule 29 C.F.R. § 1904.39	New Rule (effective Jan. 1, 2015)
Work-related fatality	Must report within 8 hours if death occurs within 30 days after work-related incident	Must report within 8 hours if death occurs within 30 days after work-related incident
Work-related in-patient hospitalization	Must report 3 or more in-patient hospitalizations within 8 hours if hospitalizations occur within 30 days after work-related incident No requirement if 1 or 2 in-patient hospitalizations	Must report any in-patient hospitalization within 24 hours if hospitalization occurs within 24 hours after work-related incident
Work-related amputation	No reporting requirement	Must report any amputation within 24 hours if amputation occurs within 24 hours after work-related incident
Work-related loss of an eye	No reporting requirement	Must report any loss of an eye within 24 hours if eye loss occurs within 24 hours after work-related incident

The rule also provides two new definitions:

- **In-patient hospitalization** – “a formal admission to the in-patient service of a hospital or clinic for care or treatment.”
- **Amputation** – “the traumatic loss of a limb or other external body part . . . includ[ing] 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 . . . [and excluding] avulsions, enucleations [loss of an eye], degloving, scalping, severed ears, or broken or chipped teeth.”

Employers will want to train their staff who handle OSHA matters on the new reporting requirements.

New reporting option via electronic form on OSHA’s website

The rule also introduces a new form of reporting by allowing employers to submit required reports to OSHA via an electronic form soon to be located on OSHA’s website. This reporting option is in addition to reporting in-person or by telephone to the OSHA Area Office that is nearest to the site of the incident, and reporting by telephone to OSHA’s toll-free central telephone number.

Reports required by final rule will be publicly available on OSHA’s website

Though not mentioned in the final rule or its preamble, Assistant Secretary of Labor Dr. David Michaels announced that all required reports of fatalities, hospitalizations, amputations, and eye losses will be publicly available on OSHA’s website.³ In doing so, he said that OSHA wanted to “nudge” employers toward safer workplaces by making injury and illness reports available to the public, and in particular to workers, employers, and researchers.

New list of partially exempt industries

In the new rule, OSHA adopted the NAICS to classify industries that are partially exempt from Part 1904 recordkeeping requirements, dropping the old Standard Industrial Classification (SIC) system.⁴ It also changed the composition of those partially exempt industries on the basis of updated safety information. Those industries newly required to keep OSHA records include, among others, lessors of residential and commercial buildings, property managers, and packaging and labeling services.

The industry groups that are newly partially exempt from recordkeeping requirements include, among others, electronics and appliance stores, gasoline stations, pipeline transportation of crude oil and natural gas, wireless telecommunications carriers (except satellite), computer systems design and related services, and certain kinds of stores.

Pending rulemakings on recordkeeping

Still pending are two other proposed rules related to injury and illness recordkeeping. First, in November 2013 OSHA proposed an amendment to Part 1904 that would require quarterly electronic submission of injury and illness records for employers with 250 or more employees and annual electronic submission for employers with 20 or more employees.⁵ This rule would expand the scope of the OSHA Data Initiative through which OSHA currently collects employers' injury and illness data every three years and publishes that data on its website. Due to concerns about the proposed rule's potential to motivate employers to under-record or discourage the reporting of injuries and illnesses, OSHA has extended the comment period until October 14, 2014.⁶

Second, in January 2010 OSHA proposed to reinstate a musculoskeletal disorder (MSD) column on the OSHA 300 Log.⁷ The MSD column originally appeared in the 2001 overhaul of Part 1904, but it proved controversial due to the then-recent ergonomics rulemaking. Its effective date was delayed, then later deleted.⁸ The 2010 rule proposal again proved controversial. OSHA's latest Regulatory Agenda lists this proposal as a "long-term action." It remains unclear when, if ever, OSHA plans to issue a final rulemaking.

Recordkeeping Court Decision Not Addressed

This rulemaking does not address a key OSHA defeat in the D.C. Circuit in 2012. In *AKM LLC d/b/a Volks Constructors v. Secretary of Labor*, treated more fully in a previous alert,⁹ the D.C. Circuit overturned a longstanding interpretation of OSH Act's statute of limitations provision, which allowed OSHA to penalize employers for recordkeeping violations up to five years in the past.¹⁰ The court rejected the Secretary of Labor's argument, upheld by the the Occupational Safety and Health Review Commission, that the violations were continuing in nature, and held instead that each violation was a discrete event for which OSHA may only issue a citation if it occurred within the past six months, the applicable statute of limitations. The effect of this ruling has been to keep OSHA from alleging large numbers of recordkeeping violations covering a period of up to five years.

Conclusion

Employers should confirm their NAICS codes,¹¹ identify all applicable recordkeeping and reporting requirements, and train their recordkeeping personnel about the new incident reporting requirements and online reporting form prior to the January 1, 2015 compliance date.

Beveridge & Diamond's Occupational Safety and Health Practice provides strategic, business-focused advice to the global chemicals industry. Working alongside our clients' legal, EHS and technical teams, we help resolve critical enforcement, compliance, and regulatory issues relating to their facilities and operations. For more information, please contact the author, [Mark Duvall](mailto:mduvall@bdlaw.com), at mduvall@bdlaw.com, (202) 789-6090, or any member of our [Occupational Safety and Health Practice](#).

This alert was prepared by Mark Duvall and Ben Apple.

¹ 79 Fed. Reg. 56130 (Sept. 18, 2014), <http://www.gpo.gov/fdsys/pkg/FR-2014-09-18/pdf/2014-21514.pdf>.

² Reporting Fatalities and Multiple Hospitalization Incidents to OSHA, 29 C.F.R. § 1904.39.

³ Remarks by Dr. David Michaels, Press Call on Updated Occupational Injury and Illness Reporting and Recordkeeping Requirements (Sept. 11, 2014), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=26688.

⁴ Employers can find their NAICS code by either using the U.S. Census NAICS website, <http://www.census.gov/eos/www/naics>, or contacting OSHA.

⁵ 78 Fed. Reg. 67254, 67260 (Nov. 8, 2013), <http://www.gpo.gov/fdsys/pkg/FR-2013-11-08/pdf/2013-26711.pdf>.

⁶ Proposed Rule, Improve Tracking of Workplace Injuries and Illnesses, 79 Fed. Reg. 27605 (Aug. 14, 2014),



<http://www.gpo.gov/fdsys/pkg/FR-2014-08-14/pdf/2014-19083.pdf>.

⁷ 75 Fed. Reg. 4728 (Jan. 29, 2010), <http://www.gpo.gov/fdsys/pkg/FR-2010-01-29/pdf/2010-2010.pdf>.

⁸ 66 Fed. Reg. 52031 (Oct. 12, 2001), <http://www.gpo.gov/fdsys/pkg/FR-2001-10-12/pdf/01-25552.pdf>; 68 Fed. Reg. 38601 (June 30, 2003), <http://www.gpo.gov/fdsys/pkg/FR-2003-06-30/pdf/03-16482.pdf>.

⁹ D.C. Circuit Rejects Longstanding Interpretation of Statute of Limitations for OSHA Recordkeeping Violations in *Volks Constructors*, <http://www.bdlaw.com/news-1350.html>.

¹⁰ 675 F.3d 752, 758 (D.C. Cir. 2012).

¹¹ Employers can find their NAICS code by either using the U.S. Census NAICS website, <http://www.census.gov/eos/www/naics>, or contacting OSHA.