

Don't Be Caught Off Guard by OSHA's New Rules

CAUTION



NEW RULES

The federal Occupational Safety and Health Administration (OSHA) is pushing forward with new rules and enforcement initiatives at an unprecedented pace. Employers must keep abreast of this activity, increase their vigilance, and address safety and health issues relevant to their worksites. The following is a summary of several new OSHA rules and regulations.

New electronic recordkeeping rule

OSHA's final electronic rule, "Improve Tracking of Workplace Injuries and Illnesses," was recently released. The rule requires electronic submission of Part 1904 recordkeeping records to OSHA depending on the

employer's size and industry. In particular, it requires:

- Employers with 250 or more employees (including part-time, seasonal, or temporary workers) in each establishment to electronically submit their 300, 300A, and 301 forms to OSHA on an annual basis;
- Employers with more than 20 but less than 250 employees in certain identified industries to electronically submit their 300A form on an annual basis; and
- Employers that receive notification from OSHA to electronically submit their 300, 300A, and 301 forms to OSHA.

OSHA will then post the data from employer submissions on a publically accessible website. However, OSHA does not intend to post any information that could be used to identify individual employees.

Employer injury reporting policies

The final rule also requires employers to develop employee injury and illness reporting requirements that meet specific criteria. Specifically, employers must notify employees of the following:

- Procedures for reporting work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage employees from reporting injuries or illnesses;
- Employees have the right to report work-related injuries and illnesses; and
- Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses.

In the proposed rule, OSHA suggested that safety incentive policies and post-accident drug testing could be considered practices that would discourage employees from reporting work-related injuries or illnesses, and, therefore, could be discriminating practices. OSHA explains, "[T]he final rule does prohibit employers from using drug testing (or the threat of drug testing) as a form of adverse action against employees who report injuries or illnesses. To strike the appropriate balance here, drug testing policies should limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use."

More on the way?

As if the changes were not enough, OSHA's spring semiannual regulatory agenda was recently published. This provides a complete list of 32 regulatory actions that are under active consideration by OSHA. ADP can help companies understand and navigate these changes.



Regarding incentive programs, OSHA explained that, "Employee incentive programs take many forms. An employer might enter all employees who have not been injured in the previous year in a drawing to win a prize, or a team of employees might be awarded a bonus if no one from the team is injured over some period of time. Such program might be well-intentioned efforts by

employers to encourage their work[er]s to use safe practices. However, if the programs are not structured carefully, they have the potential to discourage reporting of work-related injuries and illnesses without improving workplace safety.” “[T]o the extent incentive programs cause under-reporting, they can result in under-recording of injuries and illnesses, which may lead to employer liability for inaccurate recordkeeping. The latter concern is what is being addressed by this final rule’s prohibition on employers using incentive programs in a way that impairs accurate recordkeeping.”



Effective dates

Following are the effective dates in the final rule:

August 10, 2016:

The most immediate effective date will be August 10, 2016, for the provisions regarding employee injury reporting policies. Specifically, the requirements to inform employees they have a right to report a work-related injury and the prohibition from discharging or otherwise discriminating against employees for reporting work-related injuries or illnesses.

January 1, 2017:

The requirements relating to the electronic submission of Part 1904 recordkeeping forms become effective January 1, 2017.

July 1 2017:

Establishments with 250 or more employees must submit information from their 2016 form 300A by July 1, 2017.

2017/2018:

Starting in 2018, these same employers will be required to submit information from all 2017 forms (300A, 300, and 301) by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2. Establishments with 20 or more but less than 250 employees in designated 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 and every year thereafter, the information must be submitted by March 2.

According to OSHA, those states that operate under a state OSHA plan will have to adopt requirements that are substantially similar within six months.

OSHA fines are increasing

August 1, 2016 is the effective date for imposition of higher fines by OSHA. The fiscal year 2016 budget agreement approved by Congress last fall permits OSHA to increase its maximum fines by up to 78% to adjust for inflation occurring since the current limits were set in 1990. The change means the existing maximum of \$70,000 for repeat and willful violations could climb to \$124,709, while the top assessment of \$7,000 for serious and other-than-serious violations could rise to \$12,471. The Congressional action applies only to these maximum penalty limits. OSHA said it also will adjust its penalty amounts annually based on the Consumer Price Index.

ADP® can help

It can be a full time job keeping up with all of the developments by federal agencies. ADP is well versed in legal developments and provides timely updates to clients about new developments of significance. We can also assist you with developing an action plan to help you remain focused on your business objectives and protect your bottom line.