OSHA published a final rule on May 12, 2016, requiring establishments to electronically submit information from their OSHA injury and illness records. This information includes:

- **Form 300A** (Summary of Work-Related Injuries and Illnesses)
- **Form 300** (Log of Work-Related Injuries and Illnesses)
- **Form 301** (Injury and Illness Incident Reports)

This rule was the subject of some controversy, and there was concern over the release of this information. While this data was always available to employees and their representatives, this will be the first time it is reported in such an open and easily accessible manner.

While many companies are hoping this rule will change, there are some things you can review to minimize issues when you have to report. The first reporting requirement will be of your 2016 data. Now is the time to make sure that you are keeping the correct records.
Who Has to Submit?

- Establishments with 250 or more employees that are currently required to keep OSHA injury and illness records.
- Establishments with 20 to 249 employees that are classified in certain industries with historically high rates of occupational injuries and illnesses must electronically submit the 300A information. See the list here: Industries with 20 to 249 employees required to report.
- You are not required to submit the employee’s personal information, such as name and address and physician name.
- You will be required to submit the information once per year.

Timeline for Implementation

The reporting requirements will be effective January 1, 2017, and the submission requirements will be phased in over three years.

<table>
<thead>
<tr>
<th>Submission Year/Date</th>
<th>Establishments With 250 Employees or More</th>
<th>Establishments With 20-249 Employees *High-Risk Employers</th>
<th>Submission Deadline</th>
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</thead>
<tbody>
<tr>
<td>2017</td>
<td>300A</td>
<td>300A</td>
<td>July 1, 2017</td>
</tr>
<tr>
<td>2018</td>
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<td>300A</td>
<td>July 1, 2018</td>
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<tr>
<td>2019</td>
<td>300, 300A, 301</td>
<td>300A</td>
<td>March 2, 2019</td>
</tr>
</tbody>
</table>

One key differentiator is that small establishments have to electronically submit only their 300A summary data.
Cleaning Up Your Data

There are some frequent reporting mistakes that can increase the number of entries on your 300 logs. While OSHA is concerned with underreporting and anything that discourages employees from reporting a case, it can be just as easy to overreport if you don’t follow the rules. We suggest reviewing the recordkeeping standard with those who fill out the logs to ensure you report only what is required.

Seven Frequent Reporting Mistakes

1. Not following the four validating questions:
   A. Was there an injury or illness?
   B. Was it work-related?
   C. Is it a new claim or related to an ongoing claim?
   D. Does it meet the specific criteria of restricted duty, lost time, and medical treatment beyond first aid?

2. Exposures:
   A. We are required to keep medical records and perform testing for different types of exposures to chemicals, bloodborne pathogens, and air contaminants. However, these often shouldn’t be recorded on the log because they haven’t yet actually created an injury or illness.
   B. Contaminated needlestick injuries and cuts from sharps are the only exposures that are automatically recorded.

3. Separating workers’ compensation from OSHA:
   A. Many company recordkeepers for the OSHA log also have workers’ compensation responsibilities and will put any workers’ compensation case on the OSHA log.
   B. A key strategy is to keep a mental wall between what is workers’ compensation and what goes on the log.
C. A good example is diagnostic testing. You would have to pay workers’ compensation for an X-ray, an MRI, or a blood test. However, if these diagnostics came back negative and showed no injury, it may not meet the validating question, Was there an injury or illness?

D. Another key element is “medical treatment beyond first aid.” When the doctor orders any treatment beyond first aid, it becomes recordable.

4. Lost time and restricted duty:

A. The day of the injury does not count as the first day of lost time or restricted duty. If that day is the only day the employee missed, this case would not count as lost time or a restricted case.

B. Limit the total count of lost time and restricted days to 180 calendar days.

C. Remember that OSHA uses calendar days, so don’t try to be creative with lost time or restricted cases and say that someone was on vacation or not scheduled to work. Use the calendar days from when the doctor restricted the employee’s work.

5. Privacy cases:

A. Cases that meet the following criteria may be noted on the log as a “privacy case”:

i. An injury or illness to an intimate body part or reproductive system.

ii. An injury or illness resulting from sexual assault.

iii. Mental illness.

iv. HIV infection, hepatitis, tuberculosis.

v. Needlestick and sharps injuries that are contaminated with another person’s blood or other potentially infectious material.

vi. Employee voluntarily requests to keep his or her name off the log for other illness cases.
B. Do not enter the name of the employee on the OSHA 300; instead, enter “privacy case.”

C. Keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information if asked to do so.

6. Carryover from the past year:

A. Cases stay in the year in which they occurred. If an employee has an injury in December but has lost time in January of the new year, you would just update the log from last year.

B. Don’t carry over the injury to the new log unless it is a new injury.

7. Local managers not understanding the appropriate response and measures to take when an injury happens. Many organizations have excellent programs from a corporate perspective but do not have a feedback mechanism to determine if the program is being implemented at the direct supervisor/employee level.

For more information on recordkeeping, visit OSHA’s recordkeeping home page.

The Importance of DART

The DART rate (cases with Days Away, Restricted and Transfer) is often an underutilized benchmark and indicator of future issues. When looking at them from a workers’ compensation perspective, DART cases have the greatest opportunity to become expensive and to turn out poorly. When loss prevention initiatives focus on the DART cases, you can have the greatest impact on cost and employee safety.

DART cases also lead into your transitional-duty and injury management programs. Strong transitional-duty programs provide:

- Good employee communication.
- Immediate transitional duty work.
- Communication with providers.
- Goals of transitioning the employee back to full-duty work.
Additional Issues/Concerns of the New Rule—Retaliation

While this rule was billed as a recordkeeping update, it also had provisions related to retaliation. These provisions indicate that employers must educate employees on their procedures for reporting injuries and that they must let employees know that they may not be retaliated against for reporting. Further, the rule states that the procedure for reporting work-related injuries and illnesses must be reasonable and must not deter or discourage employees from reporting. OSHA has indicated that some safety incentive programs and postaccident drug testing programs could be construed as discouraging employees from reporting.

Recently, OSHA announced that it will delay the implementation of the antiretaliation portion of the rule to November 1, 2016, in order “to conduct additional outreach and provide educational materials and guidance for employers.” This announcement follows multiple legal challenges to the rule. As OSHA comes out with additional educational materials, employers will have more information on which to base their evaluations of their safety incentive programs and drug testing programs and can modify them if necessary.

As with any new OSHA standard, there will be compliance questions posed by employers and, in time, OSHA will formally answer them by issuing Letters of Interpretation. At this time, as an employer, it is best to foster a workplace that encourages communication and values employee opinions when it comes to safety. Managers need to work closely with Human Resources to understand the appropriate response to employee injuries.

Should you have any questions or need further assistance complying with the new rule, simply reach out to your Lockton representative. You can find more details here: OSHA-Improve Tracking of Workplace Injuries and Illnesses.

On October 12, OSHA agreed to further delay enforcement of the antiretaliation provisions in its injury and illness tracking rule until December 1, 2016. The US District Court for the Northern District of Texas requested the delay to allow additional time to consider a motion challenging the new provisions.
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