

OSHA Recordkeeping Expectations: *Everything You Need to Know*

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Agenda

- General Standard Overview
- Changes to Reporting Requirements
- Changes to Reporting Methodology
- Changes to Whistleblower Act
- Discussion of Injuries & How to Handle Them
- Questions?

General Standard Overview



Recordkeeping Rule Overview

- Recordkeeping Standards = 29 CFR 1904 (0-46) and 1952 (state plans)
 - 22 states have state plans for private sector and Government employees
 - 6 more states have state plans for government employees only
- 10 or more employees at a company must maintain record keeping
 - OSHA 300 log – list of work related injuries and / or illnesses
 - OSHA 301 form – more detail on each illness and / or injury
 - OSHA 300A form – overview of injuries and / or illnesses completed each year and posted

Recordkeeping Rule Overview

- Employers – record cases within 7 calendar days of notification
- Electronic Forms allowed – but must be producible (i.e., meet the access provisions of 1904.35 and 1904.40)
- 1904.29 – Privacy Protection – no names on the public documents, keep separate files for that information



Changes to Reporting Requirements



Partial Exemption

- Employers **partially** exempt are still required:
 - 1904.39, Report fatalities, amputations, the loss of an eye, or the in-patient hospitalization of one or more employees
 - 1904.41, Annual OSHA injury and illness survey (if specifically requested to do so by OSHA)
 - 1904.42, BLS Annual Survey (if specifically requested to do so by BLS)

Partial Exemption

Partially Exempt Industries Required to Maintain Records

- Many retail facilities
- Medical offices, laboratories, etc.
- Gasoline stores
- Monetary Industries
- Restaurants

[List of Partially Exempt Industries \(PDF\)](#) (Appendix A to Subpart B)

*Note: All industries in agriculture, construction, manufacturing, utilities and wholesale trade sectors are covered

Newly Required to Maintain Records

- 3118 Bakeries and tortilla manufacturing
- 4413 Automotive parts, accessories, and tire stores
- 4452 Specialty food stores
- 4539 Other miscellaneous store retailers
- 5311 Lessors of real estate
- 5322 Consumer goods rental
- 5324 Commercial, industrial machinery, equipment rental and leasing
- 5419 Other professional, scientific, and technical services
- 5617 Services to buildings and dwellings
- 6219 Other ambulatory health care services
- 6242 Community food and housing, emergency and other relief services
- 7111 Performing arts companies
- 7121 Museums, historical sites, and similar institutions
- 7223 Special food services
- 4411 Automobile dealers
- 4441 Building material and supplies dealers
- 4453 Beer, wine, and liquor stores
- 4543 Direct selling establishments
- 5313 Activities related to real estate
- 5612 Facilities support services
- 5619 Other support services
- 6241 Individual and family services
- 7113 Promoters of performing arts, sports, and similar events
- 7139 Other amusement and recreation industries
- 8129 Other personal services

Injuries

- Old Rule
 - Fatalities reported in 8 hours
 - Hospitalizations of 3 or more reported within 24 hours
- New Rule
 - Fatalities still reported in 8 hours
 - Any inpatient hospitalization within 24 hours
 - Amputations within 24 hours
 - Loss of an eye within 24 hours

Changes to Reporting Methodology



Electronic Reporting

- **Who:** Establishments with:
 - 250 or more employees that are currently required to keep OSHA injury and illness records
 - 20-249 employees that are classified in certain industries with historically high rates of occupational injuries and illnesses (large list but construction (NAICS - 23) and manufacturing (NAICS - 31-33) are called out.
- **What:** Covered establishments must electronically submit information from their 2017 OSHA Form 300A.

Electronic Reporting

- **When:** 2018, submit information from their completed 2017 Form 300A by July 1, 2018
 - 2019 on, covered establishments must submit the information by March 2
- **How:** OSHA will provide a secure website that offers three options for data submission
 - First, manually enter data into a web form
 - Second, users will be able to upload a CSV file
 - Last, users of automated recordkeeping systems will have the ability to transmit data electronically via an API (application programming interface)

Electronic Reporting

- Confusion over implementation of the Obama-era rule: deadline for filing their 2016 300A forms was then set for July 1, 2017, which later was postponed to Dec. 15 and then again to Dec. 30, 2017
- In February, OSHA instructed its compliance officers to issue an other-than-serious citation
- The maximum penalty for each other-than-serious violation can be as high as \$12,934

Changes to Whistleblower Act



Whistleblower Act 29 CFR 1904.36

Three sections in the Whistleblower Act

- Posting the Job Safety and Health — “It’s the Law” poster
- Explaining it in their employee handbooks
- Presenting it in new-employee orientation materials and training

“Employers must inform employees of their right to report work-related injuries and illnesses, free from retaliation.”

Whistleblower Act

- An employee should not be penalized:
 - For reporting an incident or injury
 - For violating the time or manner for reporting

“Procedures for reporting work-related injuries and illnesses must be reasonable and must not deter or discourage employees from reporting.”

Whistleblower Act

“An employer may not retaliate against employees for reporting work-related injuries or illnesses.”

OSHA cites three types of policies that could be considered retaliatory under this provision: disciplinary policies, drug-testing policies and incentive policies.”

Whistleblower Act

- Companies can now be specifically cited for retaliation under the recordkeeping standard
- Employees can file Section 11c retaliation complaints
- Greatly enhances the potential liability against you for any discipline issued for violation of safety rules



Whistleblower Act

Question: Am I allowed to discipline employees for violating safety rules?

Answer: The rule does not prohibit an employer from disciplining employees for violating legitimate safety rules, even if that employee was injured as a result of the violation

The rule does prohibit retaliatory, adverse action against an employee simply because they reported a work-related injury or illness

Examples: suspension, harassment, reassignment and termination

Whistleblower Act

Question: Does the rule prohibit employee safety incentive policies?

Answer: No, but it does prohibit incentive programs that deter or discourage an employee from reporting an injury or illness

Incentive programs should encourage safe work practices and promote worker participation in safety-related activities

Examples: May deter reporting

- # Safe Work Days
- Rewarding departments that are injury free

Examples: Positive Options

- Good Catches
- Completed safety training, Safety Meetings Attended

Whistleblower Act

Question: Does the rule prohibit post-accident drug testing?

Answer: The new rule does not prohibit post-accident drug testing

- It does stipulate that if an injury or illness is very unlikely to have been caused by employee drug use then the test is not valid
- If the method of drug testing doesn't identify impairment but only use at some point in the recent past, a drug test might inappropriately deter reporting (*this could make the legalization of marijuana interesting*)

Discussion of Injuries & How to Handle



Reporting an Injury



How does OSHA define first aid?

- Using a non-prescription medication at nonprescription strength
- Cleaning, flushing or soaking wounds on the surface of the skin
- Using wound coverings such as bandages, Band-Aids™, gauze pads or using butterfly bandages and Steri-Strips™
- Using hot or cold therapy
- Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts

First aid – To Do's!

- Using temporary immobilization devices while transporting an accident victim. Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister
- Using eye patches
- Removing foreign bodies from the eye using only irrigation or a cotton swab
- Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means
- Using finger guards
- Drinking fluids for relief of heat stress

How does OSHA define a recordable injury or illness?

- Any work-related fatality
- Any work-related injury or illness that results in loss of consciousness, days away from work, restricted work, or transfer to another job
- Any work-related injury or illness requiring medical treatment beyond first aid
- Any work-related diagnosed case of cancer, chronic irreversible diseases, fractured or cracked bones or teeth, and punctured eardrums
- There are also special recording criteria for work-related cases involving: needlesticks and sharps injuries (1904.8); medical removal (1904.9); hearing loss (1904.10); and tuberculosis (1904.11)

Reporting an Injury



Step 1: Did the employee experience an injury or illness?

- Scenario A:
 - A worker reports to nurses' station with complaint of painful wrists. Employee given 2 Advil™ and returned to job.



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- Scenario A:
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Answer: Injury - Go on to the next step

Why: Painful wrists was the injury experienced

Step 1: Did the employee experience an injury or illness?

- Scenario B:
 - There is a chlorine gas leak at XYZ establishment and the two employees in the area are rushed to the hospital, they are told to stay home the next day as a precautionary measure.



Step 1: Did the employee experience an injury or illness?

- Scenario B:
 - There is a chlorine gas leak at XYZ establishment and the two employees in the area are rushed to the hospital, they are told to stay home the next day as a precautionary measure.

Answer: It depends!! We need more information.

Why: We need to know if either employee exhibited signs or symptoms of an injury/illness. If yes, then go to the next step. If no, STOP. We have an event or exposure only.

Reporting an Injury

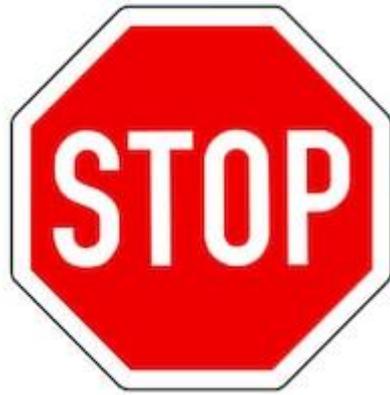


Work-related Injuries or Illnesses

- 1904.5 – Work Environment:
 - Defined as the establishment and other locations where one or more employees are working or present as a condition of employment
- 1904.5 – Travel Status:
 - While the employee was engaged in work activities in the interest of the employer
- 1904.5 – Work at Home:
 - When the employee is performing work for pay or compensation in the home
 - Directly related to the performance of work rather than the general home environment

Step 2: Is the injury or illness work-related?

- Scenario A:
 - Employee gives blood at voluntary employer-sponsored blood drive and passes out (loss of consciousness).



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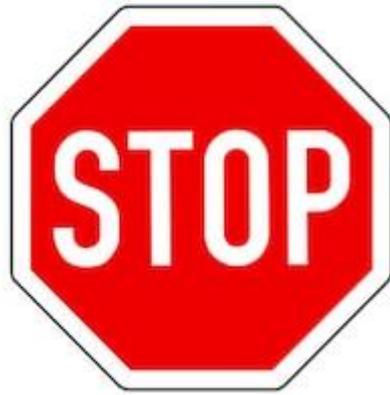
- Scenario A:
 - Employee gives blood at voluntary employer-sponsored blood drive and passes out (loss of consciousness).

Answer: Stop Here

Why: Exception - The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.

Step 2: Is the injury or illness work-related?

- Scenario B:
 - Employee sprains ankle in company parking lot on his way into work.



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- Scenario B:
 - Employee sprains ankle in company parking lot on his way into work.

Answer: Go on to next step

Why: There is no exception that applies. Parking lot exception applies only to motor vehicle accidents during commute.

Reporting an Injury



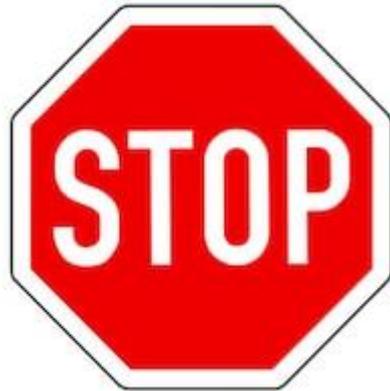
Step 3: Is the injury or illness a new case?

- 1904.6 – New Case
 - If there is a medical opinion regarding resolution of a case, the employer must follow that opinion
 - If an exposure triggers the recurrence, it is a new case (e.g., asthma, rashes)
 - If signs and symptoms recur even in the absence of exposure, it is not a new case (e.g., silicosis, tuberculosis, asbestosis)

Step 3: Is the injury or illness a new case?

- **Scenario A:**

- Five weeks ago, an employee sprained their wrist at work and received support, prescription medication, and “light duty”
- Two weeks ago employee was back on normal job and completely recovered and cleared
- Today (5 weeks after the injury) employee complains of pain in same wrist after moving boxes



Step 3: Is the injury or illness a new case?

- **Scenario A:**

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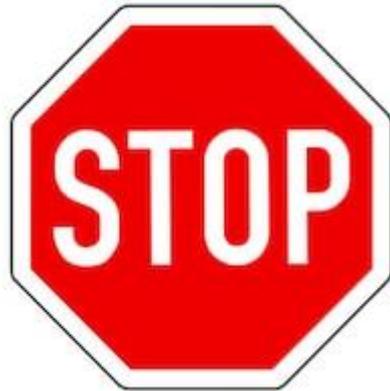
Answer: New Case

Why: Employee had completely recovered from the previous injury or illness

Step 3: Is the injury or illness a new case?

- **Scenario B:**

- Five weeks ago, an employee sprained their wrist at work and received support, prescription medication, and “light duty”
- Two weeks ago employee was back on normal job but had not received medical clearance
- Today (5 weeks after the injury) employee complains of pain in same wrist after moving boxes



Step 3: Is the injury or illness a new case?

- **Scenario B:**

- Five weeks ago, an employee sprained their wrist at work and received support, prescription medication, and “light duty”
- Two weeks ago employee was back on normal job but had not received medical clearance
- Today (5 weeks after the injury) employee complains of pain in same wrist after moving boxes

Answer: Stop here

Why: Employee had not completely recovered from the previous injury or illness. Update the previously recorded entry, if necessary.

Reporting an Injury



General Recording Criteria 1904.7

- An injury or illness is recordable if it results in one or more of the following:
 - Death
 - Restricted work activity
 - Medical treatment beyond first aid
 - Significant injury or illness diagnosed by a PLHCP
 - Days away from work
 - Transfer to another job
 - Loss of consciousness

Recordable Injuries or Illnesses

- **Days Away Cases:** One or more days away from work
 - Max count at 180 days away and/or days restricted
- **Restricted Work Cases:** One or more days of restricted work or job transfer
- **Job transfer:** Assigned to a job other than his/her regular job for part of the day
 - Recordable if employee performs his/her routine job duties for part of a day and is assigned to another job for the rest of the day

Recordable Injuries or Illnesses

- **Loss of Consciousness:** All work-related cases involving loss of consciousness must be recorded
- **Significant Diagnosed Injury or Illness:** The following work-related conditions must always be recorded at the time of diagnosis by a PLHCP:
 - Cancer
 - Chronic irreversible disease
 - Punctured eardrum
 - Fractured or cracked bone or tooth

Recordable Injuries or Illnesses

- **Bloodborne Pathogens:** Work-related needlesticks and cuts from contaminated sharp objects
- **Medical Removal:** Medically removed due to OSHA standard, must record the case unless involves voluntary removal below the levels required by the standard
- **Work-related hearing loss cases:** Employee has experienced a Standard Threshold Shift (STS)1, and Employee's hearing level is 25 decibels (dB) or more above audiometric zero [averaged at 2000, 3000, and 4000 hertz (Hz)] in the same ears as the STS
- **Tuberculosis:** Exposure at work to someone with a known case of active tuberculosis, and subsequently develops a TB infection

Examples of Workplace Injuries

Fact:

- Employee opened the driver side door started to exit his car when he caught his right foot on the raised door threshold
- Employee subsequently fell onto the parking lot surface and sustained a right knee cap injury

Is this incident OSHA recordable?

Example of Workplace Injuries

Result:

- Employee sustained injury in the company parking lot and did not involve a motor vehicle accident
- Instead, the employee was injured when he/she fell out of his/her parked vehicle and struck the parking lot surface (work environment)
- As a result, the case doesn't meet the exception in Section 1904.5(b)(2)(vii), therefore, must be recorded on the establishment's log

Examples of Workplace Injuries

Fact:

- Employees toes hurt and were swelling

Discovery:

- Employee had worked the day before with wet feet by the cooling tower
- That was the only reason he could think of.
- The doctor classified it as an “occupational disease.”
- 1 day of work was missed per doctor’s instructions.

Is this incident OSHA recordable?

Example of Workplace Injuries

Result:

- OSHA determines – work-related if more likely than not that an event or exposure at the work environment was a cause
- The doctors = occupational illness
- The employee = could not think of a more plausible scenario
- Record this illness on the 300 Log

Keep Recordkeeping Forms on File

- File and update for 5 years
- Do not send copies to OSHA unless required or asked to do so
- Allow access to the records
- Retain forms for 5 years following the year that they cover
- Update the OSHA Form 300 during that period
- Do not need to update the OSHA Form 300A or OSHA Form 301

(For details on access provisions, see section [1904.35](#) [PDF] and [1904.40](#) [PDF].)

Questions?



THANK YOU

