FAQs Regarding the New Federal Restriction on Improved Tracking of Workplace Injuries and illnesses

Updated: October 2016

Q: When does the rule go into effect?

A: The rule goes into effect on January 1, 2017. However, sections §1904.35 (Employee involvement) goes into effect on December 1, 2016 and §1904.36 (Prohibition against discrimination) went into effect on August 10, 2016.

Q: What are the new reporting requirements for employers?

A: OSHA now requires employers in certain industries to electronically submit to OSHA injury and illness data that employers are currently required to maintain under existing OSHA regulations. Establishments with 250 or more employees must electronically submit information from OSHA Forms 300 – Log of Work-Related Injuries and Illnesses, 300A – Summary of Work Related Injuries and Illnesses and 301 – Injury and Illness Incident Report annually. Establishments with 20-249 employees that are classified in certain industries must electronically submit just the OSHA Form 300A annually.

Q: What are the deadlines for submitting injury and illness records to OSHA?

A: Starting in 2017, all (? Even under 20) establishments will be required to submit their OSHA Form 300A by July 1, 2017. In 2018, establishment with 250 or more employees will be required to submit OSHA Forms 300A, 300 and 301 by July 1, 2018. Establishments with 20-249 employees will just have to submit the OSHA Form 300A by the same date. Beginning in 2019, the submission deadline will be changed from July 1 to March 2.

Q: Does this rule change an employer's obligations to retain injury and illness records?

A: No. The electronic submission requirement does not change an employer's obligation to complete and retain injury and illness records.

Q: Will establishments be able to make updates to the annual submission of records?

A: Yes. OSHA plans to design a reporting system that will allow, but not require, updates before the deadline for submission.

Q: What information relating to businesses' injuries and illnesses will be publicly available?

A: When OSHA develops the publicly-accessible website, the Agency will make the raw data available in multiple formats (after it is scrubbed of personally identifiable information) for use by employers, employees, researchers, and the public.

Q: What are the employer responsibilities under this rule?

A: The rule requires employers to involve employees and their representatives in the recordkeeping system for injuries and illnesses in several ways:

(1) Employers are required to provide access to their injury and illness records to employees and their representatives by:

> (a) Establishing a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is considered not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness; and

(b) Informing employees about company procedures for reporting work-related injuries and illnesses.

(2) Employers must not discharge or in any manner discriminate against any employee for reporting a work-related injury or illness.

(3) Employers are required to inform each employee of how he or she is to report a work-related injury and illness by telling employees:

(a) that they have the right to report work-related injuries and illnesses; and

(b) about the company's procedure for reporting work-related injuries and illnesses; and

(c) that employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses.

Q: When does the employer responsibilities go into effect?

A: November 1, 2016. However, §1904.36 (Prohibition against discrimination) goes into effect on August 10, 2016.

Q: Does the rule prohibit employers from drug testing employees who are involved in an injury and illness report?

A: Yes and No. OSHA stated that the, "*final rule does not ban drug testing of employees. However, the 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 and illnesses… Drug testing polices 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."* Although, *"if an employer conducts drug testing to comply with the requirement of a state or federal law or regulation, the employer's motive would not be retaliatory and the final rule would not prohibit such testing."* ATA recommends that employers review their drug testing procedures and how they might affect the reporting of injuries and illnesses to determine if they are violating this new restriction.

Q: If a company has fewer than 20 full time employees and uses temporary workers, do they have to retain and submit injury and illness records?

A: Yes. Employers must record the injuries and illnesses of temporary workers and independent contractors if they supervise such workers on a day-to-day basis. Day-to-day supervision occurs when *"in addition to specifying the output, product or result to be accomplished by the person's work, the employer supervises the details, means, methods and processes by which the work is be accomplished."* (OSHA Temporary Worker Initiative Bulletin No. 1)

Q: What are the responsibilities of non-supervising employers (staffing agencies, etc.)?

A: Non-supervising employers still share responsibility for their workers' safety and health. The non-supervising employer, therefore, should maintain frequent communication with its workers and the host employer to ensure that any injuries and illnesses are properly reported and recorded. Such communication also alerts the staffing agency to existing workplace hazards and to any protective measures that need to be provided to their workers. Ongoing communication is also needed after an injury or illness so the recording employer can know the outcome of the case. The staffing agency and host employer must set up a way for employees to report work-related injuries and illnesses promptly and tell each employee how to report work-related injuries and illnesses. *(OSHA Temporary Worker Initiative Bulletin No. 1)*

Q: What are the responsibilities between the supervising employer and the non-supervising employer with respect to temporary employees?

A: If a temporary worker sustains an injury or illness and the host employer knows about it, the staffing agency should be informed, so the staffing agency knows about the hazards facing their workers. Equally, if a non-supervising employer learns of an injury or illness, they should inform the host employer so that future injuries might be prevented, and the case is recorded. As a best practice, non-supervising employers and supervising employers should establish notification procedures to ensure that when a worker informs one employer of an injury and illness, the other employer is apprised as well. The details of how this communication is to take place should be clearly established in contract language. (OSHA Temporary Worker Initiative Bulletin No. 1)

Q: Does the final rule prohibit workplace incentive programs to prevent injuries and illnesses?

A: Yes and No. OSHA stated that it, *"does not intend the final rule to categorically ban all incentive programs. However, programs must be structured in such a way as to encourage safety in the workplace without discouraging the reporting of injuries and illnesses."* ATA recommends that employers review their incentive programs to ensure that all injuries and illnesses will be reported and meet OSHA's requirements.

Q: Does the rule prohibit companies from requiring that all employees promptly report injuries and illness?

A: No. However, employer reporting requirements must account for injuries and illnesses that build up over time, have latency periods, or do not initially appear serious enough to be recordable. While an employers has a legitimate interest in maintaining accurate records and identifying hazards promptly, these interests must be balanced with fairness to an employee's ability to discover their injuries and illnesses within a rigid reporting period. For reporting procedures to be reasonable and not unduly burdensome, they must allow for reporting of work-related injuries and illnesses within a reasonable timeframe after the employee has realized that he or she has suffered a work-related injury or illness. ATA recommends that employers review their procedures in regard to prompt reporting of injuries and illnesses to ensure that they balance an employee's ability to discover an injury or illness. With an employer's need to be informed about an injury or illness.

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