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OSHA to Publicize Employers' Injury and Illness Data Under Proposal, Announces Separate Enforcement Focus

With a stated goal of increasing transparency and preventing workplace injuries and illness, employers across a wide spectrum of industries need to be aware of two separate recordkeeping and reporting efforts by OSHA. On April 5, 2022, the agency outlined a new enforcement initiative for employers failing to submit 300A annual electronic submissions as required under 29 CFR 1904.41. OSHA's new enforcement priority comes on the heels of the agency's March 28, 2022, proposed rule that would significantly alter the manner and methodology of workplace injury and illness reporting.

OSHA Enforcement Program on Electronic Reporting

Employers who failed to electronically report their annual Form 300A data in OSHA's Injury Tracking Application, if required to do so, will be subject to a new OSHA enforcement program. According to OSHA's enforcement memo published April 4, 2022, the agency will begin weekly auditing to evaluate open inspections and compare the data to determine if the employer appropriately submitted an annual report. OSHA notes that it will bring enforcement cases up through September 2, 2022, for employers who failed to electronically report their Form 300A by March 2, 2022.

OSHA's Proposal to Publicize Workplace Injuries and Illnesses

As published in the Federal Register on March 30, 2022, 87 Fed. Reg. 18528, OSHA is moving forward with a proposed rulemaking that will require employer data to be made publicly available on workplace injuries and illnesses in a searchable online

database. As explained by the agency "The expanded public access to establishment-specific, case specific injury and illness data would allow employers, employees, potential employees, employee representatives, customers, potential customers, researchers, and the general public to make informed decisions about the workplace safety and health at a given establishment, and this accessibility will ultimately result in the reduction of occupational injuries and illnesses." While this data is already subject to FOIA, OSHA's intent to make the data available in a searchable online database presents a significant transformation in how the general public, competitors, and employees can access the data.

OSHA's proposed rule identifies other changes and updates that employers should carefully review to identify whether commenting on the rulemaking proposal is appropriate. For example, while some employers with 250 or more employees may now be exempt from certain reporting requirements, the proposed rule increases the burden on other employers with more than 100 employees. According to OSHA, "[T]he proposed rule would eliminate the requirement for all establishments with 250 or more employees in industries that are required to routinely keep OSHA injury and illness records to electronically submit information from the Form 300A to OSHA. Instead, establishments with 100 or more employees in certain designated industries (listed in appendix B to subpart E) would be required to electronically submit information from their OSHA Forms 300, 301, and 300A to OSHA once a year. OSHA also proposes to update the industry classification system used for the proposed list of designated industries in appendix A and B to subpart E."

Key Takeaways

- OSHA has initiated a new enforcement program for employers and businesses classified in certain industries with historically high rates of occupational injuries and illnesses that failed to electronically submit their annual Form 300A data.
- OSHA issued a Proposed Rule that will require establishments with 100 or more employees in certain high-hazard industries to electronically submit information from their OSHA Forms 300, 301 and 300A to OSHA once a year.
- In the Proposed Rule, OSHA also intends to begin making employers' workplace injuries and illnesses publicly available in a searchable online database.
- Companies and employers interested in commenting on the Proposed Rule have until May 31, 2022, to submit comments online using Docket No. OSHA-2021-0006

on the Federal eRulemaking Portal.

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