

REGULATORY UPDATE

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OSHA Recordkeeping Forms

The Occupational Safety and Health Act of 1970 (OSH Act) generally requires covered employers to prepare and maintain records of certain occupational injuries and illnesses. The Occupational Safety and Health Administration (OSHA) is a part of the U.S. Department of Labor and responsible for administering the recordkeeping system established by the Act.

The OSH Act and recordkeeping regulations (29 CFR 1904 and 1952) provide specific recording requirements. These requirements provide the framework for the nationwide occupational safety and health recording system.

EMPLOYERS SUBJECT TO OSHA

The OSH Act covers private sector employers and employees in all 50 states, the District of Columbia, and other U.S. jurisdictions, either directly through [federal OSHA](#) or through an [OSHA-approved state program](#). Employees who work for state and local governments are not covered by federal OSHA, but may have OSH Act protections through an [OSHA-approved state program](#).

Federal agencies must have a safety and health program that meets the same standards as those applicable to private employers. Although OSHA does not fine federal agencies, it does monitor federal agencies and responds to workers' complaints. The United States Postal Service (USPS) **is** covered by OSHA.

The following individuals are not covered by the OSH Act:

- Self-employed individuals; and
- Immediate family members of farm employers that do not employ outside employees.

OSHA does not regulate workplace hazards that are regulated by another federal agency, such as the Mine Safety and Health Administration or the Federal Aviation Administration.

EXEMPTION FROM OSHA RECORDKEEPING REGULATIONS

Employers with 10 or fewer employees and whose establishments are classified as a partially exempt industry **are exempt** from the recordkeeping requirements. Partially exempt industries include establishments in specific low-hazard retail, service, finance, insurance or real estate industries and are listed [here](#).

Changes to List of Partially Exempt Employers

Effective Jan. 1, 2015, many employers lose their exempt status and must create and maintain OSHA Forms 300, 300A and 301. Under the [final rule](#), the qualifications for partially exempt employers remain the same, but the list of partially exempt industries has been updated.

REQUIRED OSHA FORMS

Employers subject to OSHA's recordkeeping regulations must prepare and maintain records of serious work-related injuries and illnesses using OSHA [Forms 300, 300A and 301](#).

- **Form 300 (Log of Work-Related Injuries and Illnesses):** Used to classify work-related injuries and illnesses and to note the extent and severity of each case. When an incident occurs, employers must use Form 300 to record specific details about what happened and how it happened.

OSHA Recordkeeping Forms

- **Form 300A (Summary of Work-Related Injuries and Illnesses):** Shows the total number of work-related injuries and illnesses for the year in each category. At the end of the year, employers must post the Form 300A in a visible location so that employees are aware of the injuries and illnesses occurring in their workplace. When an employer has more than one establishment, a separate summary must be kept at each physical location that is expected to be in operation for one year or longer.
- **Form 301 (Injury and Illness Incident Report):** Must be filled out within seven calendar days after an employer receives information that a recordable work-related injury or illness occurred. This report includes information about the employee and the treating physician, and detailed information about the case. Employers must keep this report on file for five years following the year it pertains to.

WHICH WORK-RELATED INJURIES AND ILLNESSES SHOULD BE RECORDED?

Employers must record work-related injuries and illnesses that result in:

- Death;
- Loss of consciousness;
- Days away from work;
- Restricted work activity or job transfer; or
- Medical treatment beyond first aid.

Other Recordable Work-related Injuries and Illnesses

Employers must also record work-related injuries and illnesses that are significant or meet any of the additional criteria listed below.

Significant Injuries and Illnesses

Employers must record any significant work-related injury or illness that is diagnosed by a physician or other licensed health care professional.

Most significant injuries and illnesses will result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid or loss of consciousness. However, there are some significant injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses.

According to OSHA, all work-related cases involving cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums must be recorded at the time of diagnosis by a physician or other licensed health care professional even if medical treatment or work restrictions are not recommended, or are postponed.

Additional Criteria

Employers must record the following conditions when they are work-related:

- Any needlestick injury or cut from a sharp object that is contaminated with another person's blood or other potentially infectious material;
- Any case requiring an employee to be medically removed under the requirements of an OSHA health standard;

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OSHA Recordkeeping Forms

- Tuberculosis infection as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional after exposure to a known case of active tuberculosis; and
- An employee's hearing test (audiogram) that reveals:
 - That the employee has experienced a standard threshold shift (STS) in hearing in one or both ears (averaged at 2,000, 3,000 and 4,000 Hz); and
 - The employee's total hearing level is 25 decibels (dB) or more above audiometric zero (also averaged at 2,000, 3,000 and 4,000 Hz) in the same ear(s) as the STS.

PRIVACY CONCERNS

The Health Insurance Portability and Accountability Act (HIPAA) protects the privacy of individuals by providing federal protections for personal health information held by covered entities, such as health plans, insurance issuers and health care providers. However, HIPAA does not apply to certain information held by an employer, such as information about the occurrence of work-related injuries and illnesses.

HIPAA contains specific exceptions for uses and disclosures of information that are required by law, such as OSHA's recordkeeping rule, which requires that employees, former employees and employee representatives have access to the complete OSHA 300 Log, including employee names, **EXCEPT** for privacy concern cases.

Privacy concern cases are those that are of a particularly personal nature. This is a **complete list** of types of injuries or illnesses employers must consider to be privacy concern cases:

- An injury or illness to an intimate body part or to the reproductive system;
- An injury or illness resulting from a sexual assault;
- A mental illness;
- A case of HIV infection, hepatitis or tuberculosis;
- A needlestick injury or cut from a sharp object that is contaminated with blood or other potentially infectious material; and
- Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log.

For these cases, employers must not enter the employee's name on the OSHA 300 Log. Instead, they should enter "privacy case" in the space normally used for the employee's name. Employers must keep a separate, confidential list of the case numbers and employee names for the establishment's privacy concern cases so that the cases can be updated and information provided to the government if requested.

When employers have a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, they may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. However, employers must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but need not include details of an intimate or private nature.

MORE INFORMATION

Please contact SilverStone Group for additional information on OSHA's recordkeeping and reporting requirements.

Source: Occupational Safety and Health Administration

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