

# Oregon OSHA's new recordkeeping rule: what employers need to know

## More questions?

Oregon OSHA's "Recordkeeping and reporting" page has the most up-to-date information, including fact sheets that address specific parts of the new rule. <http://osha.oregon.gov/Pages/topics/recordkeeping-and-reporting.aspx>

## Oregon OSHA adopted federal OSHA's changes to Oregon Administrative Rule (OAR) 437-001-0700 late last year, and they went into effect on May 1, 2017.

Part of the rule requires certain employers to report all recordable workplace injuries through a secure federal OSHA website. This website went live on August 1, 2017, so employers can begin reporting their injuries any time. They have pushed out the date for enforcing this rule until December 1, 2017, but it's a good idea to get started now.

### Who should report injuries?

#### All employers with 250 or more employees:

- Businesses with 250 or more employees will be reporting information from OSHA Forms 300 (Log of Work-Related Injuries and Illnesses) and 300A (Summary of Work-Related Injuries and Illnesses). They will also be required to provide information from Department of Consumer and Business Services (DCBS) Form 801 -**OR-** the OSHA 301 Injury and Illness Incident Report.

#### Employers with 20-249 employees that are classified in certain higher risk industries:

- That industry list is available online at: <https://www.osha.gov/recordkeeping/NAICScodesforelectronicsubmission.html>.
- Businesses with 20-249 employees that are required to report need only share information from the annual OSHA 300A.

- Employee numbers are based on establishment rather than firm size, so the number of employees you have at one physical location determines whether you are required to report.

### What about exempted industries?

The new recordkeeping rule kept that exemption, so if you are in a North American Industry Classification System (NAICS) industry that is not required to keep OSHA injury and illness records, you still do not have to keep them, and will not be required to report injuries. **NOTE:** Many NAICS codes have changed and are not included in the list of exempt industries. If your old NAICS code was exempt, you will still be exempt.

Oregon OSHA recently removed the recordkeeping exemption on three education categories:

- **NAICS 6111** (Elementary and Secondary Schools)
- **NAICS 6116** (Other Schools of Instruction), and
- **NAICS 6117** (Educational Support Services). School and educational support will now be required to keep an OSHA log of workplace injuries and to report those injuries if they have 250 or more employees.

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## How should I report injuries?

Federal OSHA has set up an Injury Tracking Application (ITA) website: <https://www.osha.gov/injuryreporting/index.html>.

There are three options:

- Manually enter data into a web form
- Upload a CSV (comma-separated values) file, or
- Use an API (application programming interface) if your organization uses an automated recordkeeping system

## When should I get started?

Employers have until December 1, 2017, to report the information from their **2016 year** because OSHA extended the compliance deadline.

Employers will have until July 1, 2018, to report **2017 data**, and then the date will change to March 2 for every year after that.

## Does this rule impact anything else?

According to the rule, employers must:

- Establish a procedure for employees to report work-related injuries promptly and accurately
- Inform employees of this procedure and tell them how to report work-related injuries
- Inform employees that they have the right to report work-related injuries without fear of retaliation

The easiest way to inform employees about their rights is to ensure you have posted the latest version of Oregon OSHA's *It's the Law!*, available at: <http://osha.oregon.gov/essentials/Pages/posting-requirements.aspx>.

## What about discipline, drug testing, and incentive programs?

Oregon OSHA's *Construction Depot* newsletter provided a good description in their November 16, 2016, issue:

**Discipline:** Don't use discipline, or the threat of disciplinary action, to retaliate against an employee for reporting an injury or illness. Your safety program should treat all workers consistently if they break rules—regardless of whether they were, or were not, injured.

**Incentives:** Don't use incentive programs to penalize workers for reporting an injury or illness. For example, if an employee reports an injury, and is subsequently denied a benefit as part of an incentive program, this **may** constitute retaliation against the employee for exercising the right to report. Incentive programs should encourage safe work practices and promote worker participation in safety-related activities.

**Drug testing:** Don't use drug testing, or the threat of drug testing, to retaliate against an employee for reporting an injury or illness. What's important is whether you have a reasonable basis for believing that an employee's drug use could have contributed to the injury. There is no prohibition against post-incident drug testing, random drug testing, and pre-employment drug testing under state or federal law—including workers' compensation law. However, post-incident drug testing will not necessarily indicate whether drug use played a direct role in the incident.

