

Lawsuit Aims to Vacate OSHA's Electronic Recordkeeping Rule

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By Nathan Pangrace, Attorney

Public health organizations filed a lawsuit against the Occupational Safety and Health Administration (OSHA) seeking to rescind the agency's electronic recordkeeping rule.

Back in 2016, OSHA issued a new regulation requiring employers with 250 employees or more to submit electronically their OSHA 300, 301, and 300A forms. Form 300A is an annual summary of an employer's workplace injuries and illnesses. Forms 300 and 301 require more detailed information, such as the injured employee's name and job title, the date of injury, the location where the incident occurred, and a description of the employee's injury or illness, including the body parts affected. The new rule would have put data reported from these forms on OSHA's public website. After OSHA released the new rule, employers became anxious that plaintiffs' attorneys, unions, competitors, and the media might obtain this information. However, labor unions and safety organizations claimed the data would provide valuable workplace safety research.

On January 26, 2019, OSHA issued a revised electronic recordkeeping rule eliminating the requirement that covered employers submit electronically their OSHA 300 and 301 forms. OSHA eliminated the requirement on the grounds that it would prevent government collection of sensitive information, such as detailed descriptions of workers' injuries. OSHA concluded the benefit of collecting 301 and 300 forms was uncertain. Further, the agency explained it could not guarantee employers would redact personal identifying information from their submissions.

Now, public interest and labor groups have challenged OSHA's decision to remove the requirement that employers electronically submit OSHA 300 and 301 forms. Labor organizations battled hard to have OSHA include these forms in the original rule. The lawsuit, filed in the U.S. District Court for the District of Columbia, accuses OSHA of violating the Administrative Procedure Act. The lawsuit contends OSHA failed to provide a reasoned explanation for the change in its position, failed to consider comments to the rule, and relied on considerations that have no basis in law. The lawsuit also claims OSHA's actions are arbitrary, capricious, and an abuse of discretion.

We will keep you updated on the status of the lawsuit and any further developments regarding OSHA's electronic recordkeeping requirements. In the meantime, employers with 250 more

employees are still required to electronically submit their 300A forms to OSHA by **March 2, 2019**. Employers are also still required to maintain Forms 300 and 301 on site (though not submit them electronically). OSHA may continue to request these forms as needed through inspections and enforcement actions.

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