

It's Time to Comment on OSHA's Notice of Proposed Rulemaking

By Ronald D. "Scott" Williams

August 2018

In May 2016, OSHA published a final rule to Improve Tracking of Workplace Injuries and Illnesses, which requires certain employers to, among other things, electronically submit injury and illness data to OSHA on an annual basis. Since the implementation of the final rule, the original electronic submission deadline of July 1, 2017, has been extended several times. On November 22, 2017, OSHA issued a press release stating that it intended to publish a notice of proposed rulemaking to "reconsider, revise, or remove portions" of the final rule in 2018.

On July 30, 2018, OSHA released its proposed rulemaking, rescinding the requirement for establishments with 250 or more employees to electronically submit OSHA Forms 300 (OSHA Log) and 301 (OSHA Incident Report). The proposed rulemaking still requires these establishments to electronically submit OSHA Form 300A (OSHA Summary) on an annual basis. Under the current recordkeeping rule, the deadline for electronic submission of calendar year 2017 information was July 1, 2018. OSHA is not currently accepting data from OSHA Form 300 or 301 and will not enforce the deadlines for these two forms while the rulemaking is pending. OSHA's stated reasons for rescinding the more extensive filing requirement include the concern of disclosing private employee information and the cost and burden to employers of complying with the current recordkeeping rule.

While the reduced filing requirement is likely a welcome reprieve for the subject establishments, the proposed rulemaking fails to address the anti-retaliation provision of the final rule, which most employers find most concerning. The anti-retaliation provision of the final rule, which includes, but is not limited to, the prohibition of certain drug testing and safety-incentive programs, are still in effect. OSHA is accepting comments on the proposed rulemaking until September 28, 2018. Although OSHA is specifically seeking comment on the rule's impact on employee privacy, employers should consider taking this opportunity to call for further reconsideration, revision, or removal of portions of the anti-retaliation provision of the final rule that have created uncertainty in the implementation and enforcement of standard employment policies and practices.

If you would like more information, please contact:

[Ronald D. "Scott" Williams](mailto:scwilliams@burr.com) in Birmingham at scwilliams@burr.com or (205) 458-5436 or the Burr & Forman attorney with whom you regularly work.

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