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REMINDER: February 1, 2020 Deadline to Prepare, Certify, & Post OSHA 300A Annual Summaries of Work-Related Injuries: 5 Common Mistakes Employers Make

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This is your yearly reminder about the important February 1st deadline to prepare, certify and post your OSHA 300A Annual Summary of workplace injuries and illnesses, for all U.S. employers, except those with ten or fewer employees or those whose NAICS codes are in the set of low-hazard industries exempt from OSHA's injury and illness recordkeeping requirements, such as dental offices, advertising services, and car dealers (see the exempted industries at [Appendix A to Subpart B of Part 1904](#)). The Form 300A is a summation of the workplace injuries and illnesses recorded on the OSHA 300 Log during the previous calendar year, as well as the total hours worked that year by all employees covered by the particular OSHA 300 Log.

Note that February 1st falls on a Saturday this year, but that does not affect the deadline to post. So, if there will be no one present at your workplace to make the posting on that Saturday, be sure to get your 300A posted by Friday, January 31st.

This February 1st requirement to prepare, certify and post 300A forms should not be confused with [OSHA's Electronic Recordkeeping Rule](#). The February 1st deadline is only about the internal hard copy posting of 300A data for your employees' eyes. The E-Recordkeeping Rule, on the other hand, requires certain employers to electronically submit data from their 300A Annual Summary forms to OSHA through OSHA's web portal – the [Injury Tracking Application](#). The deadline for those submissions this year (i.e., to submit 300A data from 2019) is March 2, 2020. [Click here](#) for more information about OSHA's E-Recordkeeping Rule.

By February 1st every year, covered employers must:

- Review their OSHA 300 Log(s);
- Verify the entries on the 300 Logs are complete and accurate;
- Correct any deficiencies identified on the 300 Logs;
- Use the injury data from the 300 Log to calculate an annual summary of injuries and illnesses, and input those calculations into the 300A Annual Summary Form; and

- Have a “Company Executive” certify the accuracy of the 300 Log and the 300A Summary Form.

Five Common 300A Mistakes that Employers Make

We frequently see employers make the following five mistakes related to this annual duty to prepare, post and certify the injury and illness recordkeeping summary:

1. Not having a management representative with high enough status within the company “certify” the 300A;
2. Not posting a 300A just because there were no recordable injuries that year;
3. Not maintaining a copy of the *certified version* of the 300A form;
4. Not updating prior years’ 300 Logs based on newly discovered information about previously unrecorded injuries or changes to injury outcomes that were previously recorded; and
5. Confusing or conflating the requirement to Post a 300A in the workplace with the requirement to electronically submit 300A data to OSHA’s web portal.

1. Certifying the 300 Log and 300A Annual Summary

The 300 Log and the 300A Annual Summary Form are required to be “certified” by a “company executive.” Specifically what the company executives are certifying is that they:

1. Personally examined the 300A Annual Summary Form;
2. Personally examined the OSHA 300 Log from which the 300A Annual Summary was developed; and
3. Reasonably believe, based on their knowledge of their companies’ recordkeeping processes that the 300A Annual Summary Form is correct and complete.

A common mistake employers make is to have a management representative sign the 300A Form who is not at a senior enough level in the company to constitute a “company executive.” As set forth in [1904.32\(b\)\(4\)](#), company

executives include only the following:



- An owner of the company (only if the company is a sole proprietorship or partnership);
- An officer of the corporation;
- The highest-ranking company official working at the establishment; or
- The immediate supervisor of the highest-ranking company official working at the establishment.

2. Posting the 300A Annual Summary

After certifying the 300A, OSHA's Recordkeeping regulations require employers to post the certified copy of the 300A Summary Form in the location at the workplace where employee notices are usually posted. The 300A must remain posted there for three months, through April 30th.

Another common mistake employers make is to not prepare or post a 300A Form in those years during which there were no recordable injuries or illnesses at the establishment. Although, in years where there have been no recordable injuries, there is no requirement to prepare a 300 Log or any 301 Forms, OSHA regulations still require employers to complete the 300A form by inputting establishment and employment information (e.g., employee count and man-hours worked), then entering zeroes into each column related to the number of injuries and day counts, and posting the 300A just the same.

3. Maintaining a Copy of the 300A for Five Years

After the certified 300A Annual Summaries have been posted between February 1st and April 30th, employers may take down the 300A Form, but must maintain for five years following the end of the prior calendar year at the facility covered by the form or at a central location, a copy of:

- The underlying OSHA 300 Log;
- The certified 300A Annual Summary Form; and
- Any corresponding 301 Incident Report forms.

In this technology era, many employers have transitioned to using electronic systems to prepare and store injury and illness recordkeeping forms. As a result, another common mistake employers make is to keep only the electronic version of the 300A, and not the version that was printed, "certified," typically by a handwritten signature, and posted at the facility. Accordingly, those employers have no effective way to demonstrate to OSHA during an inspection or enforcement action that the 300A had been certified.

4. Updates to OSHA Injury and Illness Recordkeeping Forms

Another common mistake employers make is to put away old 300 Logs and never look back, even if new information comes to light about injuries recorded on those logs. However, OSHA's Recordkeeping regulations require employers during the five year retention period to update OSHA 300 Logs with newly discovered recordable injuries or illnesses, or to correct previously recorded injuries and illnesses to reflect changes that have occurred in the classification or other details. This requirement applies only to the 300 Logs; i.e., technically there is no duty to update 300A Forms or OSHA 301 Incident Reports.

Note that for injuries that occurred in 2019 that resulted in the injured employee missing days of work or being on a work restriction in both 2019 and 2020 (e.g., from December 28, 2019 – January 5, 2020), the day count calculated for your 2019 300A related to that injury must reflect the total days the employee was away or on restriction, including the days from both December 2019 and January 2020 (in this example, 9 days included in the day count on your 2019 300A). Likewise, if the injured worker from that same December 2019 injury remains out of work or on restriction as of the February 1, 2020 300A deadline, you must estimate the total days the employee is expected to be away or on restriction, and use that total number, again including days from both 2019 and those expected in 2020, up to a maximum of 180 days, on the 2019 300A.

5. Not to be Confused with Electronic Recordkeeping

As mentioned above, the February 1st deadline is separate and apart from the electronic data submission requirement of OSHA's E-Recordkeeping Rule. The deadline in 2020 for employers to electronically share data from their 2019 300A forms is set for March 2, 2020, naturally trailing the deadline to prepare the summary data

from which the E-Recordkeeping submission



Note, there is one lone [holdout State OSH Program](#) — Maryland OSHA (MOSH) that has not yet adopted the E-Recordkeeping Rule, despite OSHA's directive in the final rule for state plans to adopt substantially identical requirements within six months after its publications, and an April 30, 2018 press release announcing that all employers in State Plan States should implement the Rule. California adopted the rule in 2018 and included a requirement for a "catch-up" submission. And last year, Wyoming and Washington state also adopted their own versions of the E-Recordkeeping Rule, so covered establishments in those states are now required to submit data by the March 2nd deadline. Notwithstanding fed OSHA's April 2018 press release, Maryland employers do NOT have any requirement to submit their 2019 data this year. According to staff at MOSH, at this time, the rule has not been adopted and there is no specific timeline for when it will be.

The future of the Rule in general, not just in Maryland, remains a little uncertain. After years of industry backlash and multiple legal challenges, on January 2019, OSHA issued an Amended Final E-Recordkeeping Rule that:

- Amended 29 C.F.R. § 1904.41 by removing the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301; and
- Required employers to submit their Employer Identification Number (EIN) along with the data.

83 Fed. Reg. 36494 (July 30, 2018).

Rather than settling the status of the E-Recordkeeping Rule, this change will likely just mire the rule in further controversy. It addressed only one of the significant concerns about the rule—eliminating the requirement for the

largest employers (those with establishments with 250+ employees), to annually submit to OSHA the data from their 300 logs and 301 detailed incident reports. However, the amended rule leaves intact the concerning requirements for these large employers and many smaller employers to annually submit 300A annual summary data, and does not touch the troubling anti-retaliation provisions (e.g., limits to post-injury drug testing and safety incentive programs). There are also pending cases in federal courts challenging the data submission, data publication, and anti-retaliation requirements.

All of that is to say, the future of E-Recordkeeping is not entirely clear... unlike the well-established duty to post those 300A forms later this week!

For more information about OSHA's E-Recordkeeping Rule, join us on May 20, 2020 for a webinar: [OSHA's E-Recordkeeping Rule and Significant Injury Reporting Rule Update](#), which is part of [CMC's 2020 OSHA Webinar Series](#).