

# CLIENT ALERT



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## **OSHA Reporting for The ‘Other Half’ of The Country: Are You Ready?**

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**Employers in states with their own OSHA agencies should now be prepared to report incidents that fall within new federally mandated categories.**

On September 11, 2014, the federal Occupational Safety and Health Administration (OSHA) announced that it was changing the reporting requirements for severe injuries, effective January 1, 2015.<sup>1</sup> Prior to that date, employers were only obligated to affirmatively report a workplace fatality or the in-patient hospitalization of *three or more* employees from a single incident. Beginning on January 1, 2015, employers in states regulated under *federal* OSHA were required to report the following:

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- All work-related fatalities
- All work-related in-patient hospitalizations of *one or more* employees
- All work-related amputations
- All work-related losses of an eye.

However, about half the states have in place their own versions of OSHA. In such states, state regulations apply in lieu of federal regulations.<sup>2</sup> States with their own OSHA agencies were encouraged to meet the federal deadline if they could, and many (*e.g.*, Michigan) planned to simply incorporate the federal regulations verbatim. However, state-plan states were given an additional six months, if needed, to amend their own reporting requirements to conform to the federal changes. That six-month extension will expire on July 1, 2015, employers should be prepared to report any incidents that fall into the above categories.<sup>3</sup>

### **What Is Required**

Employers must verbally report work-related fatalities within eight hours of finding out about the incident. For any in-patient hospitalization, amputation or eye loss, employers must report the incident within 24 hours of learning about it.

A fatality, amputation, loss of an eye, etc. may not always be simultaneous with the incident. If a worker dies within 30 days of a work-related incident, it must be reported to OSHA. Further, for an in-patient hospitalization, amputation or loss of an eye, such incidents must be reported to OSHA if they occur within 24 hours of the work-related incident.

Employers have three options for reporting an event:

1. Call the nearest OSHA area office during normal business hours
2. Call the 24-hour OSHA hotline (1.800.321.OSHA or 1.800.321.6742)
3. Report electronically by a new means of reporting events that OSHA is currently developing for its website.

Under OSHA's recordkeeping regulation, certain covered employers are required to prepare and maintain records of serious occupational injuries and illnesses using the OSHA 300 Log (and possibly other related forms).<sup>4</sup> However, two classes of employers are partially exempt from routinely keeping injury and illness records. First, employers

with 10 or fewer employees at all times during the previous calendar year are exempt from routinely keeping OSHA injury and illness records. OSHA's revised recordkeeping regulation maintained this exemption. Second, establishments in certain low-hazard industries are also partially exempt from routinely keeping OSHA injury and illness records. Starting on January 1, 2015, several new industries were partially exempted from keeping OSHA records, but, at the same time, OSHA added 25 new industries to the list of those required to keep illness and injury records. *Notwithstanding these exemptions from routine recordkeeping requirements, all employers under OSHA jurisdiction are subject to the new reporting requirements.* See OSHA's website (available at [https://www.osha.gov/recordkeeping2014/reporting\\_industries.html](https://www.osha.gov/recordkeeping2014/reporting_industries.html)) for additional information.

OSHA's goal in expanding the reporting obligations is to better focus its resources and attention on those industries or workplaces that present the greatest risk to workers. Even before this expansion, OSHA took very seriously the prompt reporting of covered incidents. Such scrutiny is likely to increase. If you have questions regarding this new rule or any other aspect of OSHA's applicability to your workplace, please contact the author.

## Endnotes

1. Our Client Alert "OSHA Expands Injury Reporting Obligations," available at <http://www.pepperlaw.com/publications/osha-expands-injury-reporting-obligations-2014-09-24/>, discussed these changes when they were announced.
2. Although state regulations cannot be inconsistent with or less strict than federal regulations, they may be more strict. It is therefore important that employers know whether federal or state OSHA applies in their state and, if state-run, consult the appropriate state regulations.
3. It is possible that some state-plan states may not meet the July 1, 2015 deadline to conform to federal standards. However, the obligation rests on employers to know the applicable requirements. If an employer is unsure, it should check with its state's agency.
4. The forms and instructions can be found at <https://www.osha.gov/recordkeeping/RKforms.html>.