

INSIGHTS

OSHA Broadly Expands Injury Reporting Requirement

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Under a new rule issued by OSHA last week, employers will be required to report to the agency any workplace incident resulting in the in-patient hospitalization of even one employee. This report must be made within 24 hours of the workplace incident. Employers also will be required to report any incident involving amputation or eye loss, regardless of whether it results in in-patient hospitalization.

The new reporting requirements become effective January 1, 2015.

Under the pre-existing rule, an employer was only required to report incidents resulting in the in-patient hospitalization of three or more employees. One small positive development is the agency has lengthened the allowed time for notifying OSHA of a reportable injury incident from 8 hours to 24 hours. Employers, however, will still be required to report any employee fatality within 8 hours.

As another change to the pre-existing rule, the agency has now defined “in-patient hospitalization” as: “formal admission to the in-patient service of a hospital or clinic for care or treatment.” Hospital visits that involve only observation or diagnostic testing need not be reported. The previous rule did not define in-patient hospitalization.

While the duty to report directly to OSHA any “amputation” may seem reasonable, “amputation” is defined extraordinarily broadly to include injuries such as the loss of a fingertip, even though there is no bone loss from the finger.

Impact on Employers and Recommendations for Compliance

Employers should expect that expanded reporting will lead to more workplace inspections. Currently, a very serious incident involving the hospitalization of one or even two employees generally does not come to OSHA’s attention because the existing reporting requirement has been inapplicable. With the new rule, employers should expect that, generally, OSHA inspections will immediately follow the report of any in-patient hospitalization. More inspections, particularly in the context of serious incidents, will lead to more major fines for employers.

In response to this development, employers should educate managers and supervisors throughout their organization about the new reporting requirement and ensure that written procedures, as necessary, are revised to assure timely reporting. Failure to timely report can, and does, lead to fines.

Employers should also develop procedures for determining whether a hospital visit is an “in-patient hospitalization”—the agency will likely inspect an employer who incorrectly reports a hospital visit as an in-patient hospitalization, regardless of whether or not reporting the visit was required by the rule. Accordingly, employers may avoid inspection by correctly identifying hospital visits for observation or diagnostic testing as outside of the reporting requirements.

Employers should also revisit their incident-response procedures to assure that they are fully prepared to handle OSHA inspections following workplace injuries involving even a single in-patient hospitalization or other newly reportable events such as the loss of even a small portion of a single finger.

Recordkeeping Exemption Changes

In addition to revising the reporting requirements, as part of the same rulemaking process, OSHA also revised the list of industries that are partially exempt from requirements to keep records of work-related injuries and illnesses due to relatively low occupational injury and illness rates. Every employer should know whether their workplaces are subject to the partial exemption.

Notably, employers are required to report in-patient hospitalizations, amputations, and injuries resulting in the loss of an eye, even if they are not required to keep records of work-related injuries and illnesses.