As of January 1, 2015, OSHA’s recordkeeping and reporting requirements will change fairly dramatically, and retail is among the industries that will be impacted by these changes.

Recordkeeping Requirements

Under OSHA’s recordkeeping rules, certain employers are required to maintain records of serious occupational injuries and illnesses on forms available from OSHA’s website. Certain retailers—such as furniture stores, lawn and garden supply stores, grocery stores, department stores, and warehouse clubs—have always been, and will continue to be, subject to the recording requirements. Under the revised rule, several additional retail industries will be required to keep these records, and several are no longer subject to the rules.

The following retail industries have not been subject to the occupational illness and injury recording requirements in the past but will be required to comply with the recording rules, beginning January 1, 2015:

- Automotive dealers, including sellers of new and used cars and light trucks
- Automotive parts, accessories, and tire stores, including sellers of automotive parts and supplies, truck caps, car stereo equipment, and used auto parts
- Building material and supplies dealers
- Specialty food stores, including a wide array of retailers such as baked ham stores, meat stores, butcher shops, poultry dealers, frozen meat shops, fish and seafood markets, fruit and/or vegetable markets, baked goods stores (except where the baked goods are sold for immediate consumption), dairy product stores, coffee and tea stores, gourmet food stores, and stores selling confections, popcorn, or nuts
- Beer, wine, and liquor stores, including duty-free liquor merchandisers
• Cigar, tobacco, and smoker supply stores

• Direct-selling establishments primarily engaged in retailing heating oil, liquefied petroleum gas, and other fuels via direct selling

The recording rules are anything but self-explanatory. Retailers that have been added to the list should consult with counsel now, if they have not done so already, to begin preparations for coming into compliance with the rules.

Several retail industries have been added to the list of employers that are generally not required to keep occupational injury and illness records as of January 1, 2015:

• Other motor vehicle dealers, including sellers of motor homes, RVs, boats, motorcycles, and ATVs

• Household electronics and appliance stores

• Health and personal care stores, such as drug stores, cosmetics stores, beauty supply stores, and perfume stores

• Gasoline stations and convenience stores

• Clothing stores

• Shoe stores

• Jewelry, luggage, and leather goods stores, including stores that sell only accessories, such as hats, belts, or ties

• Sporting goods, hobby, and musical instrument stores, including a broad range of retailers such as new toy, game, hobby, and craft stores, guitar and piano stores, athletic supply stores, bike shops, sporting goods stores, and gun stores

• Book, periodical, and music stores

• Florists

• Office supply, stationary, and gift stores, including a variety of retailers such as office supply and office furniture retailers, balloon stores, greeting card shops, Christmas stores, novelty stores, and souvenir shops

• Retailers of certain specialized lines of merchandise, such as art supply stores, candle shops, cemetery memorial stores, hot tub stores, collectibles shops, swimming pool supply stores, fireworks shops, and trophy shops

Notably, retailers that are generally exempt from keeping logs under the rules may be required to do so when asked in writing by OSHA, the Bureau of Labor Statistics (“BLS”), or a state agency under the authority of OSHA or BLS. Employers with ten or fewer employees at all times during the previous calendar year are also exempt from
routinely keeping OSHA injury and illness records—even if the employer is among the list of industries normally required to keep such records.

Reporting Requirements

Importantly, the reporting requirements that go into effect on January 1, 2015, apply to all retailers, even those included in the exempt list. This means that all retailers must report to OSHA any work-related fatalities within eight hours of finding out about the incident. All retailers must also report to OSHA any in-patient hospitalization, amputation, or eye loss within 24 hours of learning about it.

This new reporting initiative allows OSHA to learn about workplace incidents in real time, aiding the agency in determining where to deploy its compliance officers. Retailers that report any such incident should be prepared for an OSHA inspection soon after.

What Employers Should Do Now

- Train your safety and human resource professionals and your managers on the new reporting requirements. Again, all retailers must promptly report to OSHA any fatalities, amputations, loss of eye incidents, or in-patient hospitalizations.

- Be aware that you can report to OSHA by:
  1. Calling OSHA’s free and confidential number: 1-800-321-OSHA (6742)
  2. Calling your closest Area Office during normal business hours
  3. Using the new online form that will soon be available on OSHA’s website

- If you have retail establishments in one or more of the jurisdictions with a state plan, contact the state plan’s office to determine when you must comply with the rule and if the state plans’ reporting rules have additional requirements. OSHA has encouraged state plans to require compliance by January 1 but recognizes that not all plans will be able to do so.

- Contact counsel for advice on how to best navigate an OSHA inspection to ensure your preparedness should OSHA decide to investigate the circumstances leading to a reportable injury or illness.

- To the extent that any of these newly reportable incidents have taken place at any of your retail establishments in the past, review the details of the incident and audit that facility and others that you believe may pose safety concerns. Identify safety hazards and address any possible health or safety hazards that you discover.

- If you are among the newly identified retail industries required to complete OSHA’s injury and illness recordkeeping, seek assistance from counsel in navigating these very complex requirements. Ensure that safety and human resource professionals in your organization are properly trained and fully
understand how and when to record an occupational illness or injury in your OSHA logs.

• Retailers that have already been subject to the recordkeeping standard should review their logs to spot potential trouble spots, and provide refresher training to safety and human resource professionals in order to help ensure full compliance with the rules.

For more information about this Advisory, please contact:

Valerie Butera  
Washington, DC  
202-861-5325  
vbutera@ebglaw.com