

OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION (OSHA) INJURY & ILLNESS RECORDKEEPING CHECKLIST

LABOR AND EMPLOYMENT PRACTICE

Occupational Safety & Health Administration (OSHA) regulations at 29 CFR §§ 1904 and 1952 set forth a maze of injury and illness recordkeeping and reporting requirements applicable to approximately 1.5 million U.S. workplaces.

OSHA places significant emphasis on injury and illness recordkeeping because the data culled from employers' injury and illness logs is used by OSHA to identify workplace safety and health problems and to track progress in solving those problems. OSHA also uses recordkeeping data to improve standards, tailor enforcement programs, and focus individual inspections.

The current leadership team at OSHA believes that industry grossly under-records injury and illness data, and because of this concern, OSHA has cracked down on recordkeeping enforcement. Specifically, since the end of 2009, OSHA has been actively seeking out employers that it believes under-record or improperly record injury and illness data through recordkeeping inspections.

A senior OSHA official described this recordkeeping enforcement focus as follows: "There are several different goals here. One is just to find out what's going on. Another is to send a message to companies – via penalties – that injury and illness book-cooking won't go unpunished." OSHA has been finding the serious violations that it expected, including one remarkable set of recordkeeping citations with a penalty exceeding \$1.2 million. Accordingly, accurate OSHA recordkeeping is more important now than ever before.

This checklist is intended to help employers decode OSHA's complex recordkeeping regulations and simplify the process. It highlights key issues for employers, such as exemptions from recordkeeping, required OSHA forms for recording certain work-related injuries and illnesses, recordkeeping protocols, updating/verifying records, and creation of recordkeeping policies and practices.

The checklist reflects the collective experience of the OSHA Practice Group at Epstein Becker & Green, P.C., which manages and counsels employers through hundreds of OSHA inspections of all types across the nation.

SECTION I: SCOPE OF RECORDKEEPING RULE

Determine Whether a Partial Exemption Applies

- ❑ Employers are required to record certain work-related injuries and illnesses unless the employer:
 - has 10 or fewer employees (company-wide) at all times during the previous calendar year; or
 - operates in one of the specific low-hazard industries identified by OSHA (e.g., retail, service, finance, insurance
 - or real estate). For a complete list, see the table below from *Appendix A to Subpart B of OSHA’s Recordkeeping Rule*:

- ❑ These are considered “partial” exemptions because
 - regardless of size or industry, all employers must report any workplace incident that results in a fatality or the hospitalization of three or more employees
 - an otherwise exempted employer may nevertheless be required to keep injury & illness records upon written notice from OSHA or the Bureau of Labor Statistics

Determine Whether Injured Employees Are Covered

- ❑ Recordkeeping requirements apply to an injury or illness to:
 - all employees on the payroll (whether labor, executive, hourly,

SIC Code	Industry Description	SIC Code	Industry Description	SIC Code	Industry Description	SIC Code	Industry Description
525	Hardware Stores	592	Liquor Stores	726	Funeral Service and Crematories	803	Offices of Osteopathic
542	Meat and Fish Markets	594	Miscellaneous Shopping Goods Stores	729	Miscellaneous Personal Services	804	Offices of Other Health Practitioners
544	Candy, Nut, and Confectionery Stores	599	Retail Stores, Not Elsewhere Classified	731	Advertising Services	897	Medical and Dental Laboratories
545	Dairy Products Stores	60	Depository Institutions (banks & savings institutions)	732	Credit Reporting and Collection Services	809	Health and Allied Services, Not Elsewhere Classified
546	Retail Bakeries	61	Non-depository	733	Mailing, Reproduction & Stenographic Services	81	Legal Services
549	Miscellaneous Food Stores	62	Security and Commodity Brokers	737	Computer and Data Processing	82	Educational Services (schools, colleges, universities, and libraries)
551 552	New and Used Car Dealers	63 64	Insurance Carriers, Agents & Brokers	738	Miscellaneous Business Services	832	Individual and Family Services
554	Gasoline Service Stations	653	Real Estate Agents	764	Reupholstery and Furniture Repair	835	Child Day Care Services
557	Motorcycle Dealers	654	Title Abstract Offices	78	Motion Picture	839	Other Social Services
56	Apparel and Accessory Stores	67	Holding and Other Investment Offices	791	Dance Studios, Schools, and Halls	841	Museums and Art Galleries
573	Radio, Television & Computer Stores	722	Photographic Studios, Portrait	792	Producers, Orchestras, Entertainers	86	Membership Organizations
58	Eating and Drinking Places	723 724	Beauty and Barber Shops	793	Bowling Centers	87	Engineering, Accounting, Research, Management, and Related Services
591	Drug Stores and Proprietary Stores	725	Shoe Repair and Shoeshine Parlors	801 802	Offices & Clinics of Medical Doctors and Dentists	899	Services, Not Elsewhere Classified

- salary, part-time, seasonal, or migrant)
 - employees not on the payroll but who are supervised on a day-to-day basis (e.g., temporary employees, subcontractors, borrowed employees, etc.)
 - all contract employees who work in process areas covered by OSHA's Process Safety Management standard, even if the employer does not supervise the contract employees on a day-to-day basis
- The OSH Act does not treat any of the following as employees for recordkeeping purposes:
- contractors not supervised by the employer
 - unpaid volunteers
 - sole proprietors
 - family members working on family farms
 - domestic workers in residences

SECTION II: OSHA RECORDKEEPING FORMS

OSHA 300 - Log of Work-Related Injuries and Illnesses

- An annual, cumulative chart of work-related injuries and illnesses
- Used to document and classify injuries and illnesses, and note the severity of each case
- Within seven calendar days of receiving notice that a covered employee has sustained a recordable injury or illness, record the injury or illness on the 300 Log
- Employers must record all of the required information on the 300 Log for each recordable case, including:
 - case number

- employee's name (unless it is a privacy case)
- employee's job title
- date of the injury or illness
- where in the workplace the injury occurred (e.g., warehouse)
- brief description of the injury or illness
- classification of the injury or illness (e.g., death, days away from work, etc.)
- number of calendar days away from work or on restricted duty (including weekends and holidays)

OSHA 301 - Injury and Illness Incident Report

- For each injury or illness recorded on the OSHA 300 Log, the employer must complete an incident report within seven calendar days of receipt of information that a recordable injury or illness has occurred
- The 301 Report supplements the 300 Log by providing more detailed information about a particular case
- The 301 Report must include information about the:
 - employee's identity
 - nature and cause of the injury (e.g., what the employee was doing at the time of the accident, and what happened)
 - identity of the treating medical professional
 - treatment provided to the employee

OSHA 300A - Annual Summary of Work-Related Injuries and Illnesses

- At the end of each calendar year, employers must create an annual summary of injuries and illnesses recorded on the OSHA 300 Log
- The 300-A Summary Form must be

completed even if there are no recordable injuries during the calendar year

- ❑ The 300-A Summary Form must summarize the following data from the 300 Log:
 - total number of workplace fatalities
 - total number of cases with days away from work (and the number of days)
 - total number of cases with job transfer or restriction (and the number of days)

Private Concern List

- ❑ Enter “Privacy Case” on the 300 Log in lieu of the injured employee’s name, if the injury relates to:
 - intimate body part or reproductive system
 - sexual assault
 - mental illness
 - HIV, hepatitis, or tuberculosis infection
 - needlestick or cut by a sharp object contaminated with another person’s blood or potentially infectious material
 - another illness (not injury) for which the employee independently and voluntarily requests that he not be named on the 300 Log
- ❑ Maintain a separate confidential list of the case numbers and employee names of the privacy concern cases
- ❑ If the employee’s job title or description of the nature of the injury or illness may enable others to identify the employee, employers should leave the job title blank or limit the description on the log

Alternate Forms May Be Permissible

- ❑ Employers may use alternate forms or electronic records for recording injuries and illnesses, incident reports, and

annual summaries, so long as the forms:

- are “equivalent” (i.e., include the same information as the OSHA form they substitute)
- are readable and understandable
- can be updated with new recordable data within seven days of an occurrence
- can be accessed and produced within required time periods
- are completed using the same instructions as the OSHA form they substitute

SECTION III: RECORDING INJURIES AND ILLNESSES

Five Basic Steps for Recording Injuries and Illnesses

- ❑ Obtain a report of every workplace injury
- ❑ Record injuries and illnesses (300 Log)
- ❑ Complete the First Report of Injury (Form 301)
- ❑ Prepare and certify the Annual Summary (Form 300A)
- ❑ Retain and maintain records for five years

Basic Recordkeeping Requirements

- ❑ Within seven calendar days, employers must record every injury, illness, or fatality that:
 - is *work-related*; and
 - is a *new case*; and
 - meets one or more of the general recording criteria in 29 CFR § 1904; or
 - meets one or more of the special recording criteria in 29 CFR §§ 1904.8-1904.12

What Is an Injury or Illness?

- ❑ An abnormal condition or disorder
- ❑ Injuries include cases such as “a cut, fracture, sprain, or amputation”
- ❑ Illnesses “include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disease, or poisoning”
- ❑ Exposure is not an injury or illness unless the exposure results in signs or symptoms

What Is “Work-Related”?

- ❑ An injury or illness is work-related if the injury or illness is:
 - caused by events or exposures in the work environment
 - contributed to by events or exposures in the work environment
 - significantly aggravated by events or exposures in the work environment
- ❑ There is no eggshell or reasonable employee exception to work-relatedness (i.e., an injury is recordable if it meets the criteria for the specific injured employee, even if the occurrence would not have impacted other employees at all or as severely)
- ❑ An injury or illness is not work-related if the injury or illness occurs:
 - solely as a result of a personal task; and
 - outside assigned work hours (i.e., time employee is expected to work plus overtime)

Geographic Presumption

- ❑ Injuries and illnesses are *presumed* to be work-related if they result from an event occurring, where employees:
 - work; or
 - are present as a condition of employment

- ❑ Exceptions to the Geographic Presumption (employers are not required to record illnesses or injuries resulting from):
 - an auto accident in the company parking lot or access road during a commute
 - symptoms that surface at work but result solely from a non- work event
 - voluntary participation in a wellness program or in a medical, fitness, or recreational activity (e.g., as a blood donation, physical exams, flu shots, or exercise classes)
 - eating or preparing food for personal consumption (unless the employee contracted food poisoning from employer- provided food, or the food was tainted by workplace contaminants such as lead)
 - personal grooming, self-medication for non-work-related conditions, or intentionally self-inflicted harm
 - the common cold or flu
 - the employee’s presence at the workplace as a member of the public rather than as an employee
 - mental illness (unless the employee voluntarily provides an opinion from a medical professional that the mental illness is work-related)
 - personal tasks unrelated to employment at the workplace outside assigned working hours

Work Relatedness: “Significant Aggravation”

- ❑ “Significant aggravation” of a pre-existing condition makes the injury or illness work-related if:
 - a workplace event aggravates the pre-existing injury enough that it yields greater consequences than would have occurred but for the aggravating event

- a workplace event or exposure results in:
 - » death
 - » loss of consciousness
 - » one or more days away from work, restricted work, or job transfer
 - » medical treatment
- In sum, if on-the-job “aggravation” independently meets recordability criteria, it is a work-related recordable injury/ illness (e.g., an employee is able to work on Monday after injuring his back playing football at home on the weekend, but at work on Monday, wrenches his back lifting a box, which causes him to miss three days of work) (29 CFR 1904.5(b)(4))

What Is a “New Case”?

- ❑ A workplace injury or illness is a new case, when an employee:
 - has *never before reported* similar symptoms
 - has *completely recovered* (i.e., all signs and symptoms disappeared) from a previous injury or illness of the same type that affected the same part of the body, and *workplace event or exposure causes the signs or symptoms to reappear*

SECTION IV: RECORDING WORKPLACE INJURIES AND ILLNESSES

Categories of General Recording Criteria - 29 CFR § 1904.7

- ❑ An injury or illness in the following categories must be recorded on the 300 Log:
 - death
 - days away from work
 - restricted work or transfer to another job
 - loss of consciousness
 - significant injury or illness

- diagnosed by a physician or other licensed medical professional
- medical treatment beyond first aid

Death

- ❑ Report all work-related fatalities to OSHA within eight hours
 - *Note:* All employers must “report” work-related fatalities, even if excluded from the duty to “record” injuries
 - Report fatalities by telephone to OSHA’s Emergency Notice Line: 800.321.6742
 - Do *not* send an email
- ❑ Record work-related injuries and illnesses resulting in death by entering a ✓ in the 300 Log’s column for “Death” cases
- ❑ Employers are required to record the following work-related fatalities but are not required to report them:
 - non-construction related automobile fatalities; and
 - work-related incidents resulting in an employee’s death 31 or more days after the incident

Days Away from Work Injuries

- ❑ Record injuries or illnesses resulting in Days Away From Work (DAFW) by:
 - entering a ✓ in the 300 Log’s column for “Days Away from Work” cases
 - entering total *calendar* days of missed work (including weekends, holidays, and other days the employee is not otherwise expected to work) in the 300 Log’s column for “Number of Days”
 - for lengthy absences, entering estimated DAFW within seven calendar days of injury, and then updating if the estimate is not accurate
 - *not* counting the day on which the injury occurred

- if a medical professional recommends days away, entering the number of days recommended even if the actual DAFW turns out to be fewer
- capping DAFW at 180 days even if the actual DAFW turns out to be greater

Restricted Work/Job Transfer

- ❑ An injury or illness is a “Restricted Work” or “Job Transfer” case if:
 - the employee is limited in performing one or more “routine functions” (i.e., a work activity “the employee regularly performs at least once per week”)
 - the employee is restricted from working one or more full days (not counting the day of the injury); or
 - a medical professional recommends restricting one or more routine functions for one or more full days of work (even if the employee does not follow the recommendation)
- ❑ *Exception:* Employers are not required to record “minor musculoskeletal discomfort” as Restricted Work if a medical professional determines that employee is able to perform all routine functions, but recommends a work restriction just to prevent a more serious condition
- ❑ Record injuries or illnesses resulting in Restricted Work or Job Transfer by:
 - entering a ✓ in the 300 Log’s column for “Job Transfer or Restriction”
 - entering total *calendar* days of work missed (including weekends, holidays, and other days the employee is not otherwise expected to work) in the 300 Log’s column “on job transfer or restriction days”
 - for lengthy restrictions/transfers, entering estimated time in the 300 Log’s column “on job transfer or restriction days” within seven

calendar days of the injury, and then updating if the estimate is not accurate

- *not* counting the day on which the injury occurred
- recording partial days (except the day of the injury) as a full day
- if a medical professional recommends restriction or transfer, entering the recommended number of days (even if actual time turns out to be less)
- clarifying vague medical recommendations (e.g., “light duty”)
- choosing the most authoritative of competing medical opinions
- capping Restricted/Transferred days at 180 days (even if actual time is greater)

Loss of Consciousness

- ❑ Record every work-related injury or illness resulting in unconsciousness:
 - it does not matter for how long the worker was unconscious
 - feeling “woozy” is not recordable as loss of consciousness
 - by entering a ✓ in the 300 Log’s column for “Loss of Consciousness”

SECTION V: SPECIAL RECORDING CRITERIA

Categories of Special Recording Criteria - 29 CFR §§ 1904.8 - 1904.12

- ❑ Certain other injuries and illnesses not otherwise covered by the five categories of General Recording Criteria must also be recorded, including:
 - significant injury or illness diagnosed by a licensed health care professional
 - medical treatment beyond first aid
 - needlestick or cut from a contaminated sharp object

- medical removal (i.e., requiring days away from work or job transfer) pursuant to special standards (e.g., lead, cadmium, benzene)
- occupational hearing loss cases
- tuberculosis infection or exposure

Significant Injury or Illness Diagnosed by a Physician

- ❑ Record significant work-related injuries and illnesses diagnosed by licensed medical professionals for which neither medical treatment nor work restrictions are recommended at the time of diagnosis
- ❑ The same is true if medical treatment or work restrictions are deferred. Examples of such injury or illness include:
 - cracked bones;
 - punctured ear drums;
 - cancer; or
 - chronic irreversible disease
- ❑ Record these injuries and illnesses at the initial diagnosis even if medical treatment or work restrictions are not recommended (or are deferred)
- ❑ Record these injuries and illnesses by entering a ✓ in the 300 Log's column for "Other recordable cases"

Medical Treatment Beyond First Aid

- ❑ Injuries or illnesses requiring medical treatment beyond first aid must be recorded on the OSHA 300 Log
- ❑ "Medical treatment" is the management and care of a patient to combat disease or disorder
- ❑ Medical treatment does not include:
 - first aid;
 - visits to medical provider exclusively for observation or counseling; or
 - diagnostic procedures, such as x-rays, blood tests, and administering prescription medication for diagnosis

- ❑ Treatment is first aid *only if* the treatment appears on this list:
 - non-prescription medication at non-prescription strength
 - cleaning, flushing, soaking surface wounds
 - wound coverings (bandaging or putting on a band-aid)
 - removing splinters or foreign materials by irrigation, tweezers, swabs
 - removing foreign bodies from eyes with swabs, irrigation
 - tetanus shots
 - non-rigid supports (e.g., elastic bandages or wraps)
 - temporary immobilization (e.g., a splint or sling)
 - drilling finger/toe nails to relieve pressure or drain blisters
 - eye patches
 - finger guards
 - massages (not including physical therapy or chiropractic treatment)
 - fluids for heat stress relief
 - hot or cold therapy
- ❑ Record any injury or illness requiring any form of medical treatment not on that list by entering a ✓ in the 300 Log's columns "remained at work" and "other recordable cases"

SECTION VI: MISCELLANEOUS RECORDING PROCEDURES

Recording Procedures

- ❑ Record each work-related injury or illness in only one *outcome* column of the 300 Log
- ❑ Select the outcome column reflecting the most serious outcome (columns on the 300 Log descend in order of seriousness from left to right)

- ❑ Corrections to errors or updates due to an outcome increasing in severity must be made by lining out (not erasing) the previous entry

Multiple Establishments

- ❑ Maintain a separate 300 Log for each separate establishment expected to operate for one year or longer
- ❑ Establishments include:
 - single physical locations where business is conducted; or
 - for industries with employees working at multiple locations (e.g., construction, utility, transportation, etc.), the main/ branch office and the terminal or station from where activities are supervised or based
- ❑ Maintain a separate 300 Log for individual divisions or geographical regions
- ❑ If an employee is injured at an establishment of the employer where he or she does not normally work, record the case on the 300 Log for the establishment where the injury occurred, not where the employee normally works
- ❑ For employees injured at a location other than one of the employer's establishments, record the case on the 300 Log where the employee normally works
- ❑ Link employees who telecommute to one of the employer's establishments

Competing Medical Opinions

- ❑ When contemporaneous and conflicting recommendations by two or more health care professionals are obtained (by the employee, the employer, or both), the employer:
 - may determine which recommendation is the most authoritative

- records (or does not record) based on the best documented, best reasoned, and most persuasive recommendation

- ❑ Once medical treatment beyond first aid is provided for an injury or illnesses (even if a subsequent medical professional concludes it was unnecessary), the case is recordable

SECTION VII: UPDATING AND VERIFYING RECORDS

Verify, Summarize, Certify, Post, and Maintain

- ❑ By February 1st of each calendar year, employers must:
 - review the 300 Log from the previous calendar year for accuracy (and update or correct, if necessary)
 - summarize the data from the 300 Log on the 300-A Summary Form
 - certify the 300-A Summary Form.
 - have the certification done only by a "Company Executive," who can be any of the following:
 - » owner of sole proprietorship
 - » partner of partnership
 - » officer of corporation
 - » highest-ranking official at jobsite
 - » supervisor of highest-ranking official
 - post the 300-A Summary Form for three months (from February 1 to April 30)

Updating and Maintaining OSHA Forms

- ❑ Keep all injury and illness recordkeeping forms for five years
- ❑ Employers are permitted to maintain past years' records at a central location, rather than at each establishment, provided that:
 - information regarding a recordable injury can be transmitted from the establishment to the central location

- records can be produced to government representatives, employees, former employees, and employee representatives within required timeframes (see below)
- ❑ Employers must continue to update 300 Logs for five years if new information becomes available (e.g., outcomes change or new facts are learned, which lead to different recording conclusions)
- ❑ Employers need not update 300-A Form or 301 Reports
- ❑ Do *not* submit recordkeeping forms to OSHA or the Bureau of Labor Statistics unless specifically requested
- ❑ Upon request by OSHA during a workplace inspection, recordkeeping forms must be produced within four business hours of receipt of the request

Employee Participation and Access to Records

- ❑ Establish a procedure for employees to report injuries
- ❑ Inform employees how and to whom to report injuries
- ❑ Provide access to 300 Logs and 301 Reports:
 - to employees, former employees, and employee representatives (e.g., union representatives)
 - by the end of the next business day
 - at no charge for first-time copies

SECTION VIII: PENALTIES

- ❑ OSHA citations can be classified in one of five ways: Other- than-Serious, Serious, Repeat, Willful, or Failure to Abate
- ❑ In general, recordkeeping violations are not classified as Serious citations, because

they do not create a substantial probability of death or serious physical harm

- ❑ They are, however, often classified as Repeat or Willful, which carry maximum penalties of \$70,000 per violation

SECTION IX: RECORDING ACTION PLAN

Implement Comprehensive Recordkeeping Plan

- ❑ Ensure recordkeeping policies are current, accurate, compliant, and implemented
- ❑ Train recordkeeping staff on OSHA requirements and internal policies
- ❑ Develop a policy requiring employees to report to management all workplace injuries and illnesses, and train all employees about the policy
- ❑ Avoid policies that discourage reporting/recording of injuries (e.g., tying bonus payments to recordable rates)
- ❑ Train your recordkeeping staff on all relevant OSHA requirements and internal recordkeeping procedures. They should be familiar with the following:
 - recordkeeping regulations: www.osha.gov/pls/oshaweb/owastand.display_standard_group?p_toc_level=1&p_part_number=1904
 - handbook on recordkeeping: www.osha.gov/recordkeeping/handbook/index.html
 - recordkeeping forms: www.osha.gov/recordkeeping/handbook/index.html
 - interpretation letters: www.osha.gov/recordkeeping/RKinterpretations.html

Conduct Periodic Recordkeeping Audits

- ❑ Conduct periodic internal or third-party

recordkeeping audits that include cross-checking medical records (e.g., first-aid logs, workers' compensation reports, sick-leave requests, accident reports, medical records, etc.) against OSHA injury and illness recordkeeping forms

- ❑ When possible, audits should be conducted at the direction of in-house or outside legal counsel to protect findings under the attorney-client privilege
- ❑ Review prior safety and health audits and recommendations, and ensure that all recommendations regarding recordkeeping are addressed

Prepared May 2012

This guide reflects the law as of the date of publication, and relates to the regulations promulgated by federal OSHA (the law under approved OSH programs in various states may differ). You should consult with an attorney before relying on any information contained herein, as the law may have changed, and outcomes may vary depending on individual circumstances.