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OSHA Update for PFI

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ERIC J. CONN is Chair of the OSHA • Workplace Safety Practice Group at **Conn Maciel Carey**, where he focuses his practice on all aspects of occupational safety & health law:

- Represents employers in inspections, investigations & enforcement actions involving OSHA, CSB, MSHA, & EPA
- Responds to and manages investigations of catastrophic industrial, construction, and manufacturing workplace accidents, including explosions and chemical releases
- Handles all aspects of OSHA litigation, from criminal prosecutions to appeals of citations
- Writes & speaks regularly on safety & health law issues
- Conducts safety training & compliance counseling

Agenda



OSHA Civil Penalties Set to Skyrocket

New OSHA Electronic Recordkeeping Rule

New Anti-Retaliation Rule

OSHA CIVIL PENALTIES SET TO SKYROCKET



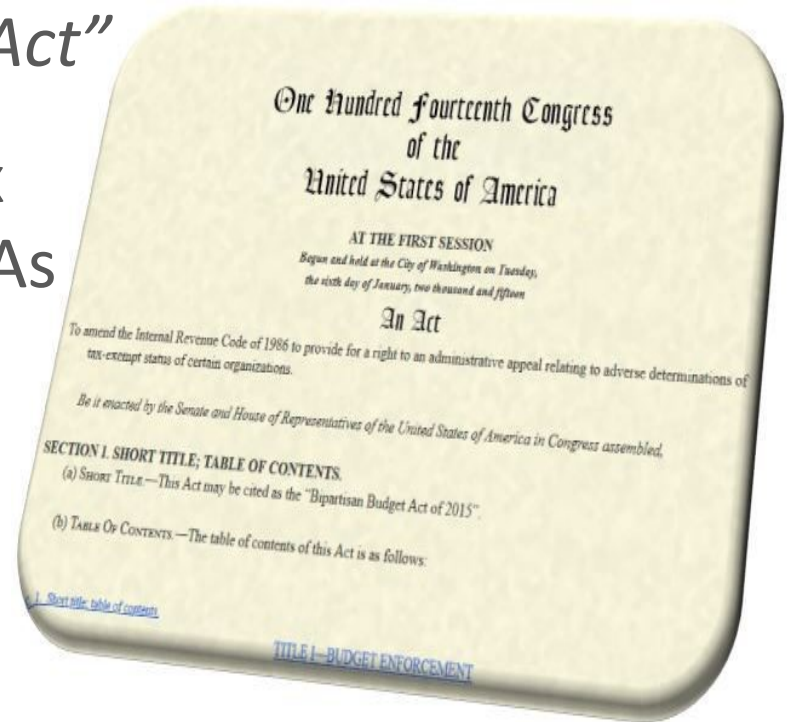
“Clear the Barn”



“I don't want to leave my successor a dirty barn I want to clean the barn up a little bit before the next person gets there.”

OSHA Civil Penalties to Skyrocket

- Bipartisan Budget Act of 2015 (avoid gov't shutdown) included a little known provision: *"Civil Monetary Penalties Inflation Adjustment Act"*
- Requires OSHA to increase max penalties to "catch up" w/ COLAs (per CPI) since last time OSHA raised penalties (1990) – **80%**
- Initial one time adjustment to be implemented by 8/1/16
- Continuous annual increases based on CPI thereafter



OSHA Citation Penalties

Characterization	Max Penalty Per Violation	New Max Penalty Per Violation (Coming Soon)
Other than Serious	\$7,000	\$12,471
Serious	\$7,000	\$12,471
Willful	\$70,000	\$124,709
Repeat	\$70,000	\$124,709
Failure to Abate	\$7,000 per day	\$12,471 per day
Criminal <i>(willful violation causes employee death)</i>	\$250,000 for Individ. 6 Mos. Prison \$500K for Corp.	\$250,000 for Individ. 6 Mos. Prison \$500K for Corp.

“Improve Tracking of Workplace Injuries and Illnesses”

OSHA’s New Final Rule

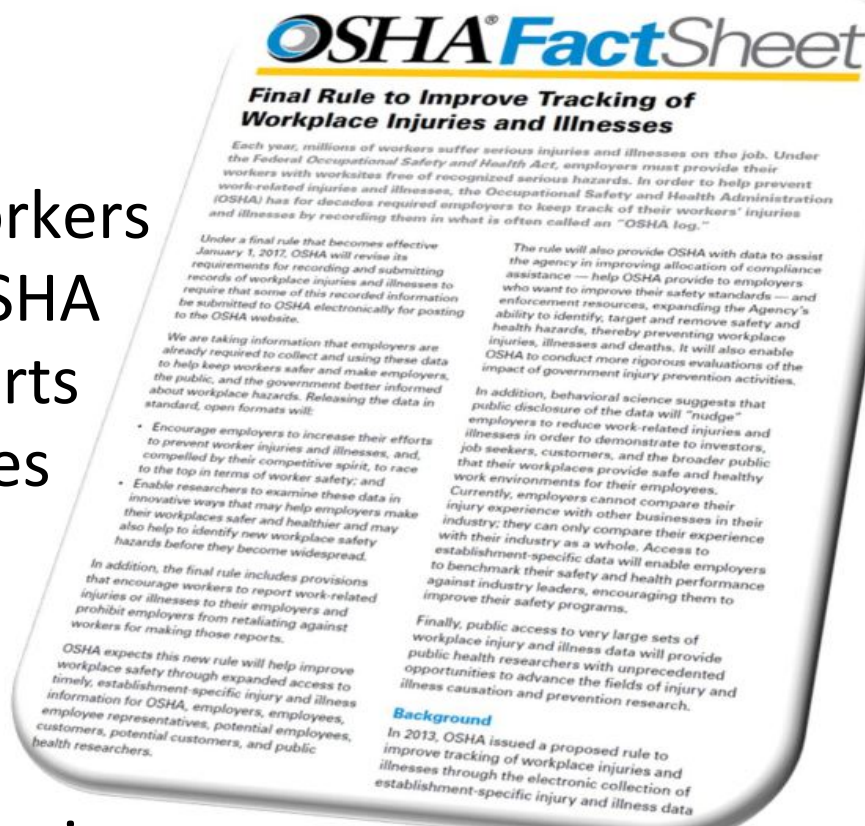


Injury Data Electronic Submission

May 12, 2016, OSHA published Final Rule re: Injury and Illness Recordkeeping Electronic Data Submission

2 Major Provisions:

1. Establishments w/ 250+ workers must annually submit to OSHA 300 Logs, 301 Incident Reports and 300A Annual Summaries
2. Establishments w/ 20 + workers in “High Hazard Industries” must annually submit 300A Annual Summaries



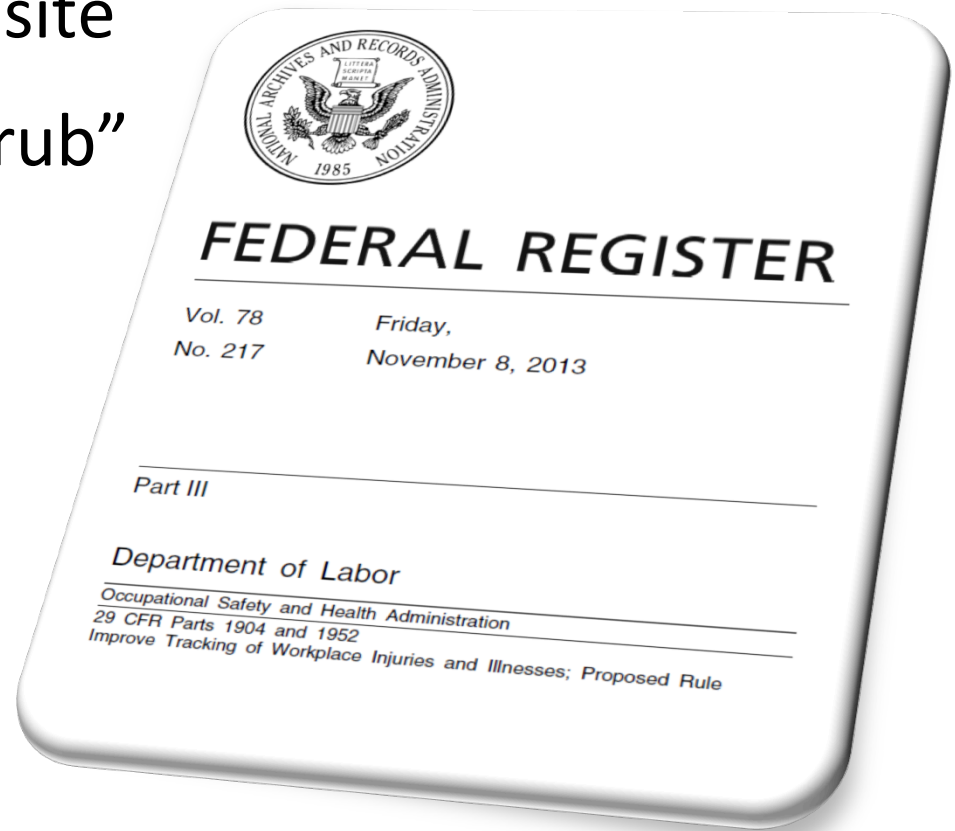
Establishment vs. Corporate-Wide

- Data submission requirements tied to “establishments”
“Single physical location where business is conducted or where services or industrial operations are performed”
- Rule requires location-by-location determination based on:
 - Number of employees at each particular location;
 - Whether number meets one of the reporting thresholds; and
 - For 20-249 level, is location a “high-hazard industry”
- Applicable employee count:
 - Total employees at workplace at peak employment during year
 - Includes temps, seasonal workers and part-time employees



Recordkeeping Data Submission

- Data to be submitted electronically through a “secure” website
- OSHA to attempt to “scrub” employee-identifying information
- OSHA will publicize employer-specific info
 - Data will be posted without context
- Quadruples number of employers required to submit injury data to DOL



“Our new rule will *nudge* employers to prevent work injuries to show investors, job seekers, customers & the public they operate safe and well-managed facilities. Access to injury data will also help OSHA better target compliance assistance and enforcement resources....”



Adverse Impact of Publishing Data

OSHA intends for the data to harm employers by:

- Discouraging consumers from doing business with them;
- Thwarting contracting opportunities with customers;
- Providing ammunition to organized labor for organizing campaigns or at the bargaining table;
- Scaring off current and prospective employees;
- Eliminating access to business loans; and
- Negatively impacting insurance coverage and rates.

Key Reporting Deadlines

Recordkeeping
Forms for Year

2016

2017

2018 and
thereafter

Establishments
w/ 250+
Employees

300As

300 Logs,
300As & 301s

300 Logs,
300As & 301s

Establishments
w/ 20-249
Employees

300As

300As

300As

Deadline to
Submit Forms

July 1, 2017

July 1, 2018

March 1, 2019
(& March 1st each
subsequent year)

Internal Injury Reporting Policies

By **November 1, 2016**, Employers must:

- Develop and implement **injury & illness reporting policy**
 - Reasonable reporting procedures
 - Employees must not be deterred/discouraged from reporting injuries and illnesses
- **Inform employees:**
 - Of the **procedures for reporting** work-related injuries
 - That Employees have **right to report** work injuries/illnesses
 - That Employers are **prohibited from discriminating against** employees for reporting work injuries/illnesses

Internal Injury Reporting Policies

- Post-accident drug testing:

“Should limit post-accident testing to situations when employee drug use is likely to have contributed to the accident and for which drug test can accurately identify impairment caused by drug use”

“Blanket post-injury drug testing policies deter proper reporting”

- Safety Incentive Program (may not create incentive to under-report):

👎 Bonus for crew of employees (e.g., pizza party, gift cards, etc.) if no injury over certain period

👍 Bonus for employee observed working safely, reporting unsafe condition, or participating on safety committee



QUESTIONS?



Contact Information



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