

January 2012

## Posting Deadline for OSHA Injury & Illness Report Approaches

By Ben Huggett

The Occupational Safety and Health Administration (OSHA) requires that each year on February 1 employers covered by the Injury and Illness Recordkeeping Rules (29 C.F.R. §§ 1904.0 *et seq.*) post the official summary of all injuries and illnesses occurring in the previous year. The information must be compiled on the OSHA Form 300A or an equivalent and posted in a conspicuous place or places where notices to employees are customarily posted. The information must remain up through April 30, 2012.

Aside from the compliance obligation to ensure this posting, there are a number of reasons that employers should pay attention to this issue, not the least of which is that OSHA is continuing its National Emphasis Program (NEP) to inspect employer compliance with the recordkeeping obligations and issue citations and penalties where they are not met.

### Review of Records

OSHA's recordkeeping rules directly require each establishment to review its log of injuries and illnesses (the OSHA 300 Log) to verify that the entries are complete and accurate, and to correct any deficiencies identified. Prior to certification, the records must be reviewed as "extensively as necessary" to ensure their accuracy.

### Certification by an Executive

In 2002, in order to increase the employer focus on injury and illnesses, OSHA amended its recordkeeping rules to require that the annual summary be certified by a company executive. The certification confirms the executive has examined the OSHA 300 Log and that he or she reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete. OSHA's intent was to ensure that the executive assumed responsibility and accountability for the accuracy of the content of the records.

An executive is: (1) an owner of the company (if a sole proprietorship or partnership); (2) an officer of the corporation; (3) the highest ranking company official working at the establishment; or (4) the immediate supervisor of the highest ranking company official working at the worksite. The effect of this requirement is that the person who keeps the records on a day-to-day basis is usually not authorized to sign the summary.

## Record Retention Requirements

OSHA requires that employers keep injury and illness records for the current year and the most recent five years. During that retention period, employers must keep the log of injuries and illnesses (Form 300) up to date. This means that employers must continue to track employee treatment and lost or restricted work time even after the case is entered on the log.

## Implications for Employers

Because they show potential safety issues, in most OSHA inspections the agency requests and reviews the employer's injury and illness recordkeeping documents. And because a company executive is required to certify the accuracy of the records, OSHA asserts that the company is fully aware of the issues reflected therein and should have acted to correct any safety deficiencies identified. Based on these potentially significant consequences, and based on the basic compliance obligation, employers should carefully review their 2011 records before certifying and posting them on February 1, 2012.

If you have any questions about injury and illness recordkeeping obligations generally, or the recordability of specific cases, please contact experienced OSHA counsel.

Ben Huggett is a Shareholder in Littler Mendelson's Philadelphia office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Mr. Huggett at [tbhuggett@littler.com](mailto:tbhuggett@littler.com).