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## OSHA ANNOUNCES NEW INJURY AND ILLNESS REPORTING REQUIREMENTS AND RECORDKEEPING EXEMPTIONS

On September 11, 2014, the Occupational Safety and Health Administration (OSHA) announced a final rule containing two amendments to the Agency's injury and illness recordkeeping and reporting regulations that will go into effect on January 1, 2015.

The first amendment changes the **current requirement** for employers to report only work-related fatalities and the in-patient hospitalization of three or more employees. Under **the new rule**, employers will also be required to report to OSHA when even a single employee suffers a work-related in-patient hospitalization, an amputation, or the loss of an eye.

OSHA defines "hospitalization" as "a formal admission to the in-patient service of a hospital or clinic for care or treatment," but not if only for observation or diagnostic testing. OSHA's definition of "amputation" includes "fingertip amputations with or without bone loss, medical amputations resulting from irreparable damage, and amputations of body parts that have since been reattached." It does **not** include "avulsions (tissue torn away from the body), degloving (skin torn away from the underlying tissue), scalplings (removal of the scalp), severed ears, or broken or chipped teeth."

While a work-related fatality will still have to be reported within eight hours of the employer's learning of it, the new rule allows employers 24 hours to report a hospital admission, amputation, or loss of an eye. However, if that hospitalization, amputation, or eye loss does not occur within 24 hours of the work-related incident that caused or contributed to it, then the incident need not be reported to OSHA. The new rule also does not change the current provision that requires fatalities to be reported only if the death occurs within 30 days the work-related incident. 29 CFR §1904.39(b)(6).

All employers who are covered by the OSH Act, even those who are exempt from maintaining injury and illness records, will continue to be required to comply with the new injury and illness **reporting** requirements. While currently those reports must be made either by telephone or in-person, employers will be allowed under the new rule to use a Web portal that OSHA is developing to file the reports electronically, in addition to the current phone reporting options. *According to OSHA Assistant Secretary David Michaels, OSHA plans to post the employer reports for some severe injuries and illnesses, and for all fatalities, on the Agency's public website. The reports would then be readily available for unions, public interest groups, the media, and any other individuals or organizations to use for any purpose.*

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State OSHA agencies are expected to follow suit with similar amendments, although Alaska, California, Hawaii, Kentucky, Oregon, Utah, and Washington already have their own injury and illness reporting requirements that are similar to, and in some cases more stringent than, the amended Federal OSHA reporting requirement.

The second amendment in the new rule updates the list of industries that are exempted from keeping injury and illness records because of their relatively low occupational injury and illness rates. The new list is based on more recent injury and illness data and uses the newer North American Industry Classification System (NAICS code) instead of the Standard Industrial Classification system (SIC code) that has been used since the OSHA record-keeping rules were first issued in 1982.

As in the past, the new low-hazard industry exemption applies to individual business **establishments**. If a company has several establishments that perform different business activities, some of the company's establishments may be required to keep injury and illness records, while others may be exempt. Under the old SIC system, establishments that exist solely to serve other establishments of the same enterprise, like a distribution center, warehouse, or headquarters office, were considered to be "ancillary" to the establishments they serve and take the SIC code of the served establishments. Under the new NAICS system, there are no "ancillary" establishments. Establishments that carry out support activities for other establishments of the enterprise to which they belong are classified according to the NAICS code related to their own activity. This means, for example, that warehouses providing storage facilities for their own company's electronics and appliance stores are classified with the NAICS code for non-exempt warehouses rather than the NAICS code for the stores which will be exempt from keeping injury and illness records. Regardless of the establishment's NAICS code, however, the new rule maintains the exemption for any employer with a total of 10 or fewer employees throughout the company.

The following is OSHA's new list of NAICS codes for low-hazard industries in which establishments are **not required to keep injury and illness records**, unless specifically requested to do so by the Bureau of Labor Statistics (BLS) or some other government entity:

NAICS Code	Industry Description	NAICS Code	Industry Description
4412	Other Motor Vehicle Dealers	5411	Legal Services
4431	Electronics and Appliance Stores	5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
4461	Health and Personal Care Stores	5413	Architectural, Engineering, and Related Services
4471	Gasoline Stations	5414	Specialized Design Services
4481	Clothing Stores	5415	Computer Systems Design and Related Services
4482	Shoe Stores	5416	Management, Scientific, and Technical Consulting Services
4483	Jewelry, Luggage, and Leather Goods Stores	5417	Scientific Research and Development Services

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4511	Sporting Goods, Hobby, and Musical Instrument Stores	5418	Advertising and Related Services
4512	Book, Periodical, and Music Stores	5511	Management of Companies and Enterprises
4531	Florists	5611	Office Administrative Services
4532	Office Supplies, Stationery, and Gift Stores	5614	Business Support Services
4812	Nonscheduled Air Transportation	5615	Travel Arrangement and Reservation Services
4861	Pipeline Transportation of Crude Oil	5616	Investigation and Security Services
4862	Pipeline Transportation of Natural Gas	6111	Elementary and Secondary Schools
4869	Other Pipeline Transportation	6112	Junior Colleges
4879	Scenic and Sightseeing Transportation, Other	6113	Colleges, Universities, and Professional Schools
4885	Freight Transportation Arrangement	6114	Business Schools and Computer and Management Training
5111	Newspaper, Periodical, Book, and Directory Publishers	6115	Technical and Trade Schools
5112	Software Publishers	6116	Other Schools and Instruction
5121	Motion Picture and Video Industries	6117	Educational Support Services
5122	Sound Recording Industries	6211	Offices of Physicians
5151	Radio and Television Broadcasting	6212	Offices of Dentists
5172	Wireless Telecommunications Carriers (except Satellite)	6213	Offices of Other Health Practitioners
5173	Telecommunications Resellers	6214	Outpatient Care Centers
5179	Other Telecommunications	6215	Medical and Diagnostic Laboratories
5181	Internet Service Providers and Web Search Portals	6244	Child Day Care Services

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5182	Data Processing, Hosting, and Related Services	7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
5191	Other Information Services	7115	Independent Artists, Writers, and Performers
5211	Monetary Authorities - Central Bank	7213	Rooming and Boarding Houses
5221	Depository Credit Intermediation	7221	Full-Service Restaurants
5222	Nondepository Credit Intermediation	7222	Limited-Service Eating Places
5223	Activities Related to Credit Intermediation	7224	Drinking Places (Alcoholic Beverages)
5231	Securities and Commodity Contracts Intermediation and Brokerage	8112	Electronic and Precision Equipment Repair and Maintenance
5232	Securities and Commodity Exchanges	8114	Personal and Household Goods Repair and Maintenance
5239	Other Financial Investment Activities	8121	Personal Care Services
5241	Insurance Carriers	8122	Death Care Services
5242	Agencies, Brokerages, and Other Insurance Related Activities	8131	Religious Organizations
5251	Insurance and Employee Benefit Funds	8132	Grantmaking and Giving Services
5259	Other Investment Pools and Funds	8133	Social Advocacy Organizations
5312	Offices of Real Estate Agents and Brokers	8134	Civic and Social Organizations
5331	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	8139	Business, Professional, Labor, Political, and Similar Organizations

If you have any questions about the new OSHA reporting requirements or recordkeeping exemptions, feel free to e-mail one of our OSHA Practice Group members at Bill Principe at [bprincipe@constangy.com](mailto:bprincipe@constangy.com), Steve Simko at [ssimko@constangy.com](mailto:ssimko@constangy.com), David Smith at [dsmith@constangy.com](mailto:dsmith@constangy.com), Pat Tyson at [ptyson@constangy.com](mailto:ptyson@constangy.com), or Neil Wasser at [nwasser@constangy.com](mailto:nwasser@constangy.com). You may also call us at 404-525-8622.

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