

SUMMARY OF COMMENTS AND AGENCY DECISIONS – Explanation of Rulemaking

Division 1 updates - Adoption of Federal OSHA Amendments: Improve Tracking of Workplace Injuries and Illnesses

Administrative Order Number: 4-2023

Adopted Date: December 21, 2023

Effective Date: January 1, 2024

Rulemaking Summary:

On July 21, 2023, federal OSHA adopted amendments to their injury and illness recordkeeping regulations, announced in the Federal Register (Vol. 88, No. 139). Due to the nature of the obligations of state plans in regards to federal OSHA standards, states with OSHA state plans must promulgate rules, and in this case, recordkeeping and recording requirements, that are the same, or at least effective as the federal OSHA 29 CFR part 1904. This rulemaking is to keep Oregon OSHA in harmony with these recent changes to federal OSHA standards within six months of the federal OSHA adoption as required.

As a result, this rulemaking establishes two new requirements in Oregon OSHA's equivalent rule OAR 437-001-0700, Recording workplace injuries and illnesses:

- All employers with 100 or more employees in high-hazard industries (a subset of those who are already required to submit their OSHA Form 300A data) to electronically submit their OSHA Form 300 and DCBS Form 801 for case-specific data. The new Table 8 defines high-hazard industries in Oregon OSHA's rule.
- Employers must include their legal company name in their electronic submission of injury and illness data, along with the existing requirement of providing their Employer Identification Number (EIN).

The following note was added to section (24)(c) of the rules to help clarify for employers the electronic reporting requirements:

If subsection (24)(c) applies then the establishment is also required to electronically submit the OSHA Form 300A summary in accord with either subsection (24)(a) or (24)(b) depending on the size of the establishment.

Additionally, during this rulemaking process, Oregon OSHA identified two NAICS codes (4529 – Other general merchandise stores, and 7213 – Rooming and boarding houses) that were listed under Table 7 that were left over from a previous rulemaking (2019). These two NAICS codes do not appear on federal OSHA’s appendix A and they will be removed from the corresponding Table 7. Additionally, the NAICS code 4522 – Department stores, was mistakenly listed in Table 7 of OAR 437-001-0700 as NAICS code 4521 and it will be corrected.

Oregon OSHA also makes minor typographical changes and updates to the rule outlining to accommodate the new requirements.

The remainder of the requirements in OAR 437-001-0700 remain the same.

During the rulemaking advisory committee meeting, it was discussed to blend the new requirement into the existing requirement that for employers to submit the 300, 300A, and DCBS Form 801 in one provision. After further internal review prior to proposal, it was discovered that the way it was written would be difficult to enforce. Essentially, two rules could be violated at the same time and that could create a challenge to determine the appropriate rule to cite. Prior to proposal, the requirements were split back into two separate provisions: the previous requirements and the new requirement. The intent of this change did not provide any new requirements or reduce the existing requirements from the discussion at the rulemaking advisory committee. The language change was to ensure the two requirements were clearly stated in separate provisions of the rule.

The rule was proposed on October 31, 2023 and there was one public hearing with the public record closing on December 1, 2023. During the public hearing there was a question regarding how the Federal Injury Tracking Application (ITA) process will work for this new information. On December 19, 2023, federal OSHA announced that the updated Injury Tracking Application (ITA) is now available from [osha.gov/injuryreporting](https://www.osha.gov/injuryreporting).