

*A Newsletter for Friends of PRISM Consulting Group*

## New OSHA Recordkeeping Requirements

So, you're thinking that your company may not be big enough for OSHA to apply to you? Well, think again!

OSHA applies to all employers "engaged in a business affecting commerce". The recordkeeping requirements apply to all companies with 11 or more workers.

The Occupational Safety and Health Administration has announced that it will delay enforcement of its new standard on recordkeeping for 120 days following the official effective date of January 1, 2002. The delay is part of a settlement agreement to resolve a lawsuit filed by the National Association of Manufacturers. The agreement provides that employers will be exempt from citations during the grace period **only** if "the employer is attempting in good faith to meet its recordkeeping obligation and agrees to make corrections necessary to bring the records into compliance." The settlement also requires OSHA to focus on "compliance assistance" during the 120-day grace period.



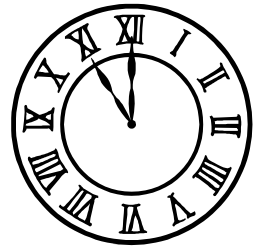
Indications are that OSHA is gearing up to begin rigorous enforcement of the rule as soon as the 120-day grace period expires. OSHA has already released enforcement guidance for administration personnel instructing that non-complying employers may face penalties of \$1,000 for each year they fail to properly maintain the new OSHA 300 form. In addition, a separate penalty ranging from \$1,000 to \$7,000 may be imposed for each OSHA 301 form that an employer fails to prepare. In fact, on November 6, 2001, the U.S. Court of Appeals for the District of Columbia upheld a decision of the Occupational Safety and Health Review Commission which approved an OSHA penalty of \$224,050 for OSHA record keeping violations under the current rules.

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## OSHA confirms further recording delays

In October, OSHA confirmed a delay in implementing the provisions for the recording of work-related hearing loss (section 1904.10) and musculoskeletal disorders (MSDs) (section 1904.12), until January 1, 2003. This delay is to permit reconsideration of certain controversial issues. OSHA was careful to emphasize, however, that it fully expects to resolve these issues in time to begin enforcing these provisions as scheduled in 2003.



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## OSHA issues final revised rule

In a step that will have a significant impact on employers throughout the country, OSHA has issued its final revised recordkeeping rule, 29 C.F.R. 1904. This event marks the first truly comprehensive overhaul of OSHA's recordkeeping provisions in 30 years. OSHA published the proposed revision (the proposed rule) in the Federal Register on February 2, 1996. Other OSHA initiatives pushed this significant proposal from the limelight for a time. However, in the last two days of the Clinton Administration, OSHA suddenly published the final version of the rule. After a brief review, on June 29, 2001, the Bush Administration announced the rule would go into effect as scheduled on January 1, 2002, with only two relatively minor exceptions.

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***Employers should note that the final revised rule contains significant, substantive differences from the rule that was originally proposed.***

Employers should note that the final revised rule contains *significant, substantive differences* from the proposed rule. The proposed rule was available for public analysis and discussion for over *five years* before the final rule was promulgated. This delay in finalizing the rule permitted a substantial accumulation of summaries, reviews, analyses, and advice in the public domain. ***Employers must ensure any plans or assumptions they may have made in reliance on such information are not out of date.***

On the following two pages, we highlight some of the significant features of the final revised rule:

## *Significant Features of the Final Revised Rule ...*

### Forms -

Form 200, the OSHA Injury and Illness Log and Summary, is replaced by Form 300, the Log of Work-Related Injuries and Illnesses. Form 101, the OSHA Supplementary Record, is replaced by Form 301, the OSHA Injury and Illness Incident Report. An entirely new form, 300A the Summary of Work-Related Injuries and Illnesses, is added for use as the Annual Summary.

### Record keeping Exemptions -

The SIC codes on the list of exempt low-hazard retail and service sector employers have changed. The small employer exemption is unchanged.

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***Non-complying employers may face penalties of \$1,000 for each year they fail to properly maintain the new OSHA 300 form.***

### Recording Criteria -

A few examples of changes affecting recording criteria are:

*Illnesses:* Minor illnesses are no longer recordable.

*Aggravation of a Pre-Existing Condition:* Recordable only if "significant."

*Parking Lot Vehicle Accidents:* Recordable when occurring during a work-related task.

*Common Colds or Flu:* Not recordable, even if contracted at work.

*Mental Illness:* Recordable *only* with a written professional opinion of work-relatedness.

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***The familiar OSHA Forms 200 and 101 have now been replaced with Form 300, 301, and 300A***

### Record Access -

Unions now have access to a portion of the supplementary records.

## Days Away from Work -

Replaces the term "lost work days." The employer must record the number of *calendar* days away from work and may *stop counting* at 180 days.

## Defining Restricted Work -

Work is "restricted" if the employee cannot perform any job activity he or she would have regularly performed on at least *one day per week*.

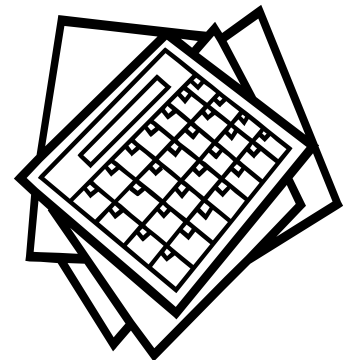
***A separate penalty ranging from \$1,000 to \$7,000 may be imposed for each OSHA 301 form that an employer fails to prepare.***

## First Aid -

The final rule provides a defined, *exclusive* list of 14 first aid treatments.

## Privacy Concern Cases -

Employers must withhold employee names from the OSHA 300 Log for injuries and illnesses that meet the definition of this new record keeping concept.



***The new Annual Log Form 300A must remain posted for 90 days.***

## Annual Summary -

There are three notable changes: (1) An executive must certify the completed form; (2) the Log must state the annual average number of employees and the total hours worked by all covered employees; and (3) the log must remain posted for *90 days*.

# ***PRISM Perspectives***

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- ***Human Resource Evaluation Audits***
- ***Policy and Handbook Development***
- ***Mergers and Acquisitions***
- ***Benefit and Compensation Programs***

## **Welcome to the First Edition of *PRISM Perspectives!***

Welcome to the first issue of our PRISM Perspectives newsletter. It has been produced with the needs of our clients in mind, so the information included should be timely and on-point.

In this issue, we are providing you with a brief summary of some of the most significant OSHA recordkeeping changes. Space limitations prevent a more complete analysis in this publication. As the revised rule will be effective on January 1, 2002, employers must move quickly to ensure their recordkeeping procedures are consistent with the requirements of this significant new rule. The content for this issue was written by Edwin G. Foulke, Jr. and Roger S. Kaplan with the Jackson Lewis law firm.



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