



OSHA 30/30[®]

A thirty minute update on OSHA law every thirty days

with **Manesh Rath**



FORTHCOMING DEADLINE FOR IMPROVED TRACKING RULE (ELECTRONIC RECORDKEEPING)

October 25, 2017

1001 G Street NW, Ste. 500 W,
Washington, D.C.



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MANESH K. RATH

Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. On developing legal issues, he has been quoted or interviewed in *The Wall Street Journal*, Bloomberg, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," WAVY-TV and C-SPAN.

Mr. Rath has extensive experience representing industry in OSHA rulemakings. He has successfully represented employers—including some of the largest in the country—in OSHA citations and investigations before federal OSHA in regions across the country and in state plan states.

Mr. Rath currently serves on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He is the editor and co-author of the OSHA chapter of the *Employment and Labor Law Audit* (9th and 10th Editions) and a co-author of the book *Occupational Safety and Health Law Handbook* (2001). He was voted by readers to Smart CEO Magazine's Readers' Choice List of Legal Elite; by fellow members to The Best Lawyers in America; selected by Super Lawyers; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



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Javaneh Nekoomaram is an associate in the environmental and workplace safety and health (OSHA) practice groups at Keller and Heckman. Ms. Nekoomaram practices in all areas of environmental law as well as occupational health and safety law, and chemical control law. She routinely advises clients on a broad range of environmental health and safety compliance issues.

Prior to joining Keller and Heckman, Ms. Nekoomaram served for three years as Counsel for the American Coatings Association. She provided regulatory compliance and advocacy on a number of issues on behalf of the coatings industry including TSCA, Prop 65, hazard communication and labeling, state chemical regulation, hazardous waste, air and water quality, occupational health and safety, and chemical safety regulations. She also served as Advocacy Counsel for the Graffiti Resource Council, an organization supported by the aerosol coatings industry that provides anti-graffiti strategies for cities across the country.



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TOPICS TO BE DISCUSSED

- Overview of recordkeeping and reporting requirements under the OSH Act.
- Understanding the Improved Tracking Rule promulgated in 2016.
- Compliance schedule and new reporting website.
- Discussing special compliance considerations.
- What employers should do.



OSH ACT RECORDKEEPING REQUIREMENTS

- Section 8 of OSH Act
 - Employers required to maintain accurate records of work-related injuries and illnesses
 - Excludes minor injuries requiring only first aid treatment
- Section 1904 of OSHA regulations
 - Employers with more than 10 employees in most industries must keep records of work-related injuries and illnesses
 - Low hazard industries exempt - identified by NAICS codes
 - 5 year retention period

IMPROVE TRACKING RULE

- May 12, 2016: OSHA issues “Improved Tracking of Workplace Injuries and Illnesses” Final Rule
- Required to submit information from one or more of these injury and illness records to OSHA electronically (excludes certain confidential employee information)
 - Form 300 log
 - Form 301 incident report
 - Form 300A summary
- OSHA to publish data on public website
- Prohibits employers from retaliating against employees who report injuries and illnesses

COMPLIANCE SCHEDULE AND WEBSITE

Establishments with 250 or more employees at any time during year in covered industries

- Electronically submit Form 300A info annually.
 - Deadline to submit info from 2016 Form 300A: Dec. 1, 2017 (**proposed**).
 - Deadline to submit info from 2017 Form 300A: July 1, 2018.
 - Deadline beginning 2019 and every year after: March 2.

- Electronically submit information from Forms 300 and 301 annually.
 - Deadline to submit info from 2017 Forms 300 and 301: July 1, 2018.
 - Deadline beginning in 2019 and every year after: March 2.

COMPLIANCE SCHEDULE AND WEBSITE

Establishments with 20-249 employees at any time during year in covered “high hazard” industries

- Electronically submit Form 300A info annually.
 - Deadline to submit info from 2016 Form 300A: Dec. 1, 2017 (**proposed**).
 - Deadline to submit info from 2017 Form 300A: July 1, 2018.
 - Deadline beginning 2019 and every year after: March 2.
- Only applies to “high hazard” industries

HIGH HAZARD INDUSTRIES

- Defined by NAICS code.
- Examples:
 - Agriculture, Forestry, Construction (NAICS 11, 23)
 - Manufacturing (NAICS 31-33)
 - Grocery stores (and other stores) (NAICS 4451 et seq)
 - Warehousing and storage (NAICS 4931)
 - Utilities (NAICS 22)
 - General freight trucking (NAICS 4841)
 - Hospitals, ambulatory care, residential care, et al.
- Identify the boundaries of establishment
- Determine the dominant economic activity at the establishment

COMPLIANCE SCHEDULE AND WEBSITE

- OSHA launched Injury Tracking Application (ITA)
 - Create account
 - Can upload forms or manually enter in data
- Can electronically submit Form 300A info now
- Third parties can submit data
 - Company responsible for accuracy of information submitted
- State adoption
 - CA, MD, MN, SC, UT, WA and WY not adopted yet

ESTABLISHMENT DETERMINATIONS

- How many establishments in your facility?
- Establishment:
 - Single physical location where business is conducted
 - Services or industrial operations are performed.
- Employers may divide one location into multiple establishments in certain limited circumstances.
- Employers may combine two locations into one site if certain factors are met.
- How many employees are in each establishment?
 - Must count maximum number of employees during calendar year
 - Includes full-time, part-time, seasonal and temporary workers

WHAT EMPLOYERS SHOULD DO

1. Prepare to comply with Dec. 1, 2017 compliance date.
2. Understand what “establishment” is and how many establishments must electronically submit.
3. Take steps to redact details that could indicate the identities of employees in injury and illness incident reports (Form 301).
4. Practice greater care in determining recordability.
5. Conduct annual audits, including cross checking data against other sources, e.g. workers’ compensation records.

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at 1:00 PM Eastern U.S.

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Thank you!

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