

Take Down the Christmas Lights and Post Your OSHA Form 300A

Labor & Employment Law Update

By Julie Proscia on January 20, 2015

It's January and you know what that means....it's time to take down your Christmas lights and get your OSHA Form 300A ready for the February 1, 2015 deadline. Oh, the fun never ends! Every year we receive numerous inquiries regarding requirements under the OSHA Form 300A, and this year is no exception – except it is an exception. As of January 1, 2015, some of the industries that were exempt from this requirement have changed.

Prior to the change, the list of exempted industries was based on the Standard Industrial Classification (SIC) system. As of January 1, 2015, the list is based on the North American Industry Classification System (NAICS). The following is a link to the new list of exempted industries: https://www.osha.gov/recordkeeping2014/reporting_industries.html

Industries that are no longer on the exempted list are NOT required to post on February 1, 2015 (as this is the summary of the previous year), but will be required to track 2015 data for posting in 2016. While the industry exemption list has changed, employers with 10 or fewer employees are still exempt from the posting requirement. As such, all non-exempt employers with more than 10 employees must still post the form. So how do you count the 10 employees?

Under the federal regulations, an individual is counted as an employee for purposes of OSHA Form 300 if the employee is on a company's payroll, regardless of whether the employee is "labor, executive, hourly, salary, part-time, seasonal, or migrant." 29 C.F.R. 1904.31(a). A company must also count individuals who are not on the company's payroll, including employees from a temporary/staffing/leasing agency and the employees of a contractor, if the company supervises those individuals on a day-to-day basis. *Id.* at 1904.31(a), 1904.31(b)(2) and (3). However, self-employed individuals are not covered. *Id.* at 1904.31(b)(1). If a company had 11 or more employees at any time during the last calendar year, the company must comply with the recordkeeping requirements.

So now that you know if you need to comply, what is the OSHA Form 300A anyways? Form 300 is the Occupational Safety and Health Administration (OSHA) injury log. Form 300A is the summary of the same. Form 300A reports an

employer's total number of deaths, missed work days, job transfers or restrictions, and injuries and illnesses as recorded on Form 300 for the previous year. Form 300A also includes the number of workers and the hours they worked for the year. Downloadable forms can be found on the United States Department of Labor's website at: <https://www.osha.gov/recordkeeping/RKforms.html>

Employers are only required to post the Form 300A summary, not the full log. However, the full log must be available for inspection by employees, their representatives or OSHA investigators upon request. Generally, a full copy of the log is kept with the compliance office, safety officer or human resources. Employers with multiple job sites should keep a separate log and summary for each location that is expected to be operational for at least a year.

In November, the Department of Labor (DOL) announced its current rulemaking activity and OSHA topped the list with the most rulemaking activity within the DOL. As such, 2015 is projected to be a year rife with OSHA inspections and audits. Making sure that you are up to date with your log is one way to ensure compliance and reduce headaches.

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