



SPECIAL REPORT

OSHA's Recordkeeping National Emphasis Program

OSHA has launched its long-awaited Recordkeeping National Emphasis Program (NEP). Effective September 30, the NEP will subject employers in certain industries to comprehensive injury and illness records reviews. Employers in the targeted industries should take time now to review their OSHA recordkeeping logs and practices to prepare for an NEP inspection.

The purpose of the NEP is to ascertain whether, and to what extent, employers are under-recording injuries and illnesses at the worksite. OSHA cites several recent studies asserting under-recording by employers on OSHA 300 logs. The NEP is designed to “identify and correct under-recorded and incorrectly recorded cases.”

Employers Selected for the NEP

The NEP is selective; it does not cover all employers in all industries. OSHA believes that the most likely places where under-recording of injuries and illnesses occurs are in low-rate establishments operating in historically high-rate industries. Thus, those employers are being targeted under the NEP.

Employers with 40 or more employees in the following industries fall within the scope of the NEP. These industries were selected by OSHA because they have a high Days Away, Restricted or Transferred (DART) rate – between 5.7 and 8.1, as reported by the Bureau of Labor Statistics (BLS):

Industry	NAICS Code
Animal (except poultry) slaughtering	311611
Scheduled passenger air transportation	481111
Steel foundries (except investment)	331513
Other nonferrous foundries (except die-casting)	331528
Concrete pipe manufacturing	327332
Soft drink manufacturing	312111
Couriers	492110
Manufactured home (mobile home) manufacturing	321991
Rolling mill machinery and equipment manufacturing	333516
Iron foundries	331511
Nursing care facilities	623110
Fluid milk manufacturing	311511
Seafood canning	311711
Marine cargo handling	488320
Copper foundries (except die-casting)	331525
Bottled water manufacturing	312112
Refrigerated warehousing and storage	493120
Motor vehicle seating and interior trim manufacturing	336360
Pet and pet supplies stores	453910
Poultry processing	311615
Support activities for animal production	115210

Under the NEP, OSHA will conduct comprehensive records inspections of establishments in these industries that reported to OSHA a DART rate between 0.0 and 4.2 in calendar year 2007 injury and illness data submitted through the OSHA Data Initiative (ODI).

Employers in construction are not totally exempt from coverage. OSHA will be inspecting a small number of construction establishments as part of the NEP.

Conduct of the Inspections

During the inspections, Compliance Safety and Health Officers (CSHOs) will:

1. Calculate the DART rate for 2007 and compare it against the rate the employer previously reported to OSHA. If the DART rate that the CSHO calculates is above 4.2, the inspection will not be conducted.
2. Review the employer's 2007 employee roster and select employees whose records will be reviewed. For establishments with fewer than 100 employees, all records will be reviewed. For establishments with 101-250 employees, or greater than 250 employees, a representative sample of employee records (50% and 33%, respectively) will be reviewed.
3. Review medical records, workers' compensation records, insurance records, payroll/absentee records and, if available, company safety incident reports, company first-aid logs, alternate duty rosters, and disciplinary records pertaining to injuries and illnesses. CSHOs are also required to review records that are stored offsite.
4. Independently reconstruct log entries for the employees. This will be compared against the employers' logs.
5. Visit any off-site medical clinic to review medical records pertaining to the employees being investigated.
6. Interview the designated recordkeeper. CSHOs must ask about and note whether there are any company policies that may have the effect of discouraging recording on the injury and illness records. An example would be if an employer had an awards program tied to the number of injuries and illnesses recorded on the OSHA log.
7. Interview a sub-sample of employees. Under the NEP, the selection of employees is not random. CSHOs are instructed to focus interviews on employees likely to be injured or become ill. Key questions include "Have you ever been encouraged to not report an injury or illness or been encouraged to report an injury or illness as a non-work-related event or exposure?" and "Are there any safety incentive programs, contests, or promotions or any disciplinary programs here? Do these – or anything else – affect your decision whether to report an injury or illness?"
8. Interview management representatives regarding the manner in which injuries and illnesses are recorded and to also determine the existence of incentive or disciplinary programs that may influence recordkeeping.
9. Interview first-aid providers and other health care professionals. "This interview should [] seek to determine the extent to which Management may influence medical treatment of ill or injured employees for the purposes of modifying OSHA recordability and to determine whether recordkeeping problems exist."
10. Perform a limited walkaround of the main plant operation areas. "The CSHO will generally be looking for consistency with the recorded injuries and illnesses, but will address any violations observed in plain view."

CSHOs are instructed to follow standard procedures for issuing citations for recordkeeping violations. When determining the classification of any citations, however, CSHOs are instructed to take into account the existence of incentive or disciplinary programs that potentially affect the recording of injuries and illnesses. This means that if an employer has any program that could discourage reporting, that may change an “other-than-serious” citation to “serious,” or a “serious” citation to “willful.”

Ergonomics

Finally, if a CSHO determines that a significant portion of the injuries and illnesses occurring at a facility are ergonomics-related (e.g., sprains and strains, back injuries, carpal tunnel syndrome, tendonitis), special inspection procedures apply. The CSHO is instructed to calculate a separate DART rate for musculoskeletal disorders. If the rate is greater than or equal to twice the industry rate, the CSHO must ask additional questions of employees, management, and health care professionals during the interviews. The Supplemental Employee Questions are:

- Have you ever called in sick due to pain from performing tasks at work?
- Have you ever taken vacation days due to pain from performing tasks at work?
- Do you take over the counter medication (Advil, Tylenol, etc.) for an unreported work-related injury?
- Do you know of anyone who has quit because of pain or injury? Who?
- Do you know of anyone who has quit because the work tasks are too physically demanding? Who?
- Are there specific departments, shifts, tasks that you know are more at risk for injury? If yes, which ones?

OSHA is determined to ascertain whether, and to what extent, injuries and illnesses are under-recorded. Employers must be prepared.

Jackson Lewis attorneys are available to assist employers in reviewing their recordkeeping policies and practices or answering questions about this important new OSHA enforcement program. For more information, please contact **Bradford Hammock, Esq.** at HammockB@jacksonlewis.com or (703) 483-8316.

