

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

**INITIAL STATEMENT OF REASONS**

**Proposed Amendments to California Code of Regulations  
Title 8, Division 1, Chapter 7, Subchapter 1, Article 2, Section 14300.41, Appendix  
H and Appendix I**

**Subject Matter of Proposed Rulemaking: Recording and Reporting of  
Occupational Injuries and Illnesses.**

**SUMMARY**

Part 1904 of Title 29 of the Code of Federal Regulations (CFR) (“Part 1904”) sets forth the federal requirements for employers to record and report their employees’ occupational injuries and illnesses. On July 21, 2023, the federal Occupational Safety and Health Administration (“OSHA”) issued a final rule amending several sections of Part 1904, including section 1904.41. These amendments revised and added some additional reporting requirements for employers to report work-related injury and illness data relating to their employees and how to report it to OSHA.

Pursuant to the federal Occupational Safety and Health Act of 1970 (29 USC § 651 *et seq.*) all states with occupational safety and health “state plans” must amend their own work-related injury and illness reporting and recording standards to ensure that they are “substantially identical” to the new federal standards (29 CFR section 1904.37(a); see *also* 29 CFR §§ 1902.3(j), and 1902.7.) California is a state with an approved occupational safety and health state plan. The Department of Industrial Relations’ Division of Occupational Safety and Health (“the Division”) is the agency responsible for administering and enforcing California’s state plan. By statute, the Division is responsible for ensuring that California’s regulations governing employers’ work-related injury or illness reports and records are amended so that they are “substantially identical to the requirements” in Part 1904.

The proposed amendments to section 14300.41 of Title 8 of the California Code of Regulations are necessary to ensure that California’s requirements for employers’ recording and reporting of work-related injuries or illnesses are “substantially identical” to Part 1904’s federal recording and reporting requirements that are currently being implemented by OSHA.

According to OSHA, the amendments in their final rule made the following changes to the prior reporting requirements in 29 CFR, part 1904:

- Establishments that are required to keep injury and illness records under part 1904, that had 100 or more employees in the previous year, and that are in certain designated industries, must electronically submit the required information from the OSHA Log of Work-Related Injuries and Illnesses form (Form 300) and the OSHA Injury and Illness Incident Report form (Form 301) to OSHA or OSHA's designee, on an annual basis.

OSHA's final rule did not change an employer's obligation to complete and maintain occupational injury and illness records, nor did it change the recording criteria for the records.

### **PROBLEM BEING ADDRESSED BY/SPECIFIC PURPOSE OF THE PROPOSED RULEMAKING**

The federal Occupational Safety and Health Act of 1970 covers most private-sector employers and their employees in all 50 states, either directly through OSHA or through a "state plan" approved by OSHA under 29 CFR §§ 1902 *et seq.* A state plan is an OSHA-approved occupational safety and health program operated by an individual state instead of by federal OSHA. OSHA approves and monitors all state plans and provides funding for those plans. If OSHA establishes a new or revised standard, a state with a plan must adopt a standard at least as effective within six months. Regarding OSHA's standards concerning employers' duties to record and report work-related injuries or illnesses, the state must adopt standards that are "substantially identical" to the federal standards. (29 CFR §§ 1902.3(j), 1902.7, and 1904.37(a).)

On July 21, 2023, OSHA issued a final rule amending the requirements for employers to record and report work-related injuries and illnesses set forth in 29 CFR § 1904.41.

OSHA's amendment to 29 CFR § 1904.41 requires certain employers to submit electronically additional injury and illness data to OSHA or its designees each year.

The Division of Labor Standards and Research, formerly a division within the Department of Industrial Relations, previously promulgated California's regulations governing the reporting and recording of work-related injuries and illnesses. Pursuant to a department reorganization in 2012, the authority to promulgate and amend these regulations has since passed to the Division of Occupation Safety and Health. (Labor Code § 150(b)). Due to OSHA issuing a final rule amending the federal injury and illness reporting standard, the Division must now amend 8 CCR § 14300.41 so that California's regulations are "substantially identical" to the corresponding federal regulations.

## **NECESSITY**

California is a state plan state under 29 CFR 1902 *et seq.* Generally, state plans must adopt corresponding regulations within six months of the adoption of a new or revised federal standard. (29 C.F.R. §1953.5(a)(1).) OSHA’s final rule amended the federal occupational injury and illness reporting requirements set forth in 29 CFR section 1904.41. As such, the Division must adopt work-related injury and illness recording and reporting standards that are “substantially identical” to the federal requirements set forth in 29 CFR, Part 1904. The Department of Industrial Relations must take all steps necessary to prevent withdrawal of approval for California’s state plan by the Federal Government. (Labor Code § 50.7.) The proposed amendments are necessary for California to comply with this federal mandate; California must amend its state plan regulation that corresponds to this federal injury and illness reporting and recording regulation: 8 CCR section 14300.41.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR OTHER DOCUMENTS RELIED ON**

In preparing the proposed rulemaking, the Division relied upon Federal OSHA’s “Final rule revising OSHA’s Occupational Injury and Illness Recording and Reporting Requirements (Improving tracking of workplace injuries and illnesses).” This document may be found at 88 Federal Register 47254, pages 47254 – 47349:

<https://www.federalregister.gov/documents/2023/07/21/2023-15091/improve-tracking-of-workplace-injuries-and-illnesses>

## **REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES**

The Division has determined that the proposed amendments does not affect small business as the additional reporting requirements apply to employers with 100 or more employees listed in specific industries. (See Cal. Gov. Code § 11346.3(b)(4)(B).)

## **BENEFITS OF THE PROPOSED RULEMAKING**

The added data collection provisions in the proposed amendments will assist employers and OSHA in developing a more accurate picture of the extent and severity of work-related incidents. These provisions expand OSHA’s, the Division’s, and the public’s access to establishment-specific work-related injury and illness data, thus allowing OSHA (and the Division) to direct more of its enforcement and compliance assistance resources to those establishments where workers are at greatest risk. Additionally, to maintain our State Plan, California must adopt work-related injury and illness recording and reporting standards that are “substantially identical” to the federal requirements set

forth in 29 CFR, Part 1904. The proposed amendments are necessary for California to comply with this federal mandate.

The public disclosure of the electronic data submission required by the proposed amendments could also lead to safer workplaces for workers. The public disclosure of this information could:

- Encourage employers to abate hazards to prevent work-related injuries and illnesses to their workers so as to preserve their reputations as good places to work or with whom to do business;
- Allow employers to gauge the effectiveness of their injury and illness prevention programs by comparing their work-related injury and illness rates with those of comparable employers;
- Allow investors to compare work-related injury and illness rates among competing employers when looking for investment opportunities;
- Allow members of the public to make more informed decisions on what businesses to patronize based on competing employers' ability to address workplace hazards impacting their workers;
- Provide better information to job-seekers regarding the work-related injury and illness rates of prospective employers.

The Division anticipates an increase in worker safety with the adoption of the proposed rulemaking. Once an employer is made aware of all occupational injuries and illnesses suffered in its workplace, an employer has a duty to implement measures to eliminate the underlying hazards.

## **SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED AMENDMENTS**

### **§ 14300.41. Electronic Submission of Injury and Illness Records to OSHA.**

29 CFR section 1904.37(a) requires a state plan to adopt rules regarding employer recording and reporting of occupational injuries and illness that are “substantially identical” to the federal regulations. Existing law requires employers with 250 employees or more during the previous calendar year, employers in specific industries with 20-249 employees during the previous calendar year, and employers who do not fall in the previous categories who are responding to a request from OSHA, to annually electronically submit information from Form 300A Summary of Work-Related Injuries and Illnesses. The proposed amendment of 8 CCR § 14300.41 would generally track the language and format of its corresponding federal counterpart, 29 CFR section 1904.41.

The proposed rulemaking would make the following specific changes to 8 CCR § 14300.41:

1. Subsection (a)(1) is renumbered to add subsections (i), previously subsection (a)(1) and (ii), previously subsection (a)(2). The renumbering tracks federal OSHA's current organization and format.
2. Subsection (a)(1) is amended to add "Form 300A Summary of Work-Related" and deletes the following text: "by establishments with 250 or more employees" The language of this proposed amendment tracks the format and language in 29 CFR section 1904.41(a)(1).
3. Subsection (a)(1)(ii), formerly subsection (a)(2), is amended to delete the first sentence heading. This proposed amendment tracks the format in 29 CFR section 1904.41(a)(1).
4. Subsection (a)(2) is amended to require employers in designated industries that had 100 or more employees at any time during the previous calendar year to submit electronically certain occupational injury and illness data from Forms 300 and 301 to OSHA once per year by the date listed in Section 14300.41(c). The language of this proposed amendment tracks the language in 29 CFR section 1904.41(a)(2).
5. Subsection (b)(1) is amended to add a third category of employers who must annually submit certain occupational injury and illness data to OSHA. If an employer has 100 or more employees at any time during the preceding calendar year, and is classified as an industry listed in newly added Appendix I, then it must submit certain information on its Form 300 and Form 301 to OSHA once a year, in addition to the required information from Form 300A. The language of this proposed amendment tracks the language in 29 CFR section 1904.41(b)(1).
6. Subsection (b)(7) is amended to correct "Web site" to "website" and "Web site's" to "website's" to be consistent with the usage in Title 8 and 29 CFR section 1904.41(b)(5).
7. Subsection (b)(11) is added to specify the information an affected employer must submit from the recordkeeping forms under subsection (a)(2). If an employer is required to submit information under section 14300.41(a)(2), it must submit all the information *except* the employee name in column B of the Log of Work-Related Injuries and Illnesses, Form 300 and all the information *except* employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7) of the Injury and Illness Incident Report, Form 301. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(b)(9).

8. Subsection (b)(12) is added to specify that an employer must include its legal company name as part of the submission of the occupational injury and illness data for the affected employer to OSHA. The language of this proposed amendment tracks the language in 29 CFR section 1904.41(b)(10).
9. Subsection (c) is amended to eliminate the initial phase-in of the reporting date deadlines for affected employers to submit their occupational injury and illness data to OSHA. The reporting date deadline of March 2 of the year after the calendar year of the form(s) remains the same, with an updated example. The language of this proposed amendment tracks the language in 29 CFR section 1904.41(c).

### **Appendices H and I for Title 8 Sections 14300 - 14300.48**

1. Appendix H for Title 8 sections 14300-14300.48 is amended to update the North American Industry Classification System (NAICS) codes for specific industries which are included in the reporting requirements set forth in subsection (a)(1)(ii) for employers that had 20 to 249 employees at any time in the previous calendar year. The language of this proposed appendix tracks the language of Appendix A to subpart E of 29 CFR section 1904.41.
2. Appendix I for Title 8 sections 14300-14300.48 is added to specify which industries are included in the reporting requirements set forth in subsection (a)(2) for employers that had 100 or more employees at any time in the previous calendar year. The language of this proposed appendix tracks the language of Appendix B to subpart E of 29 CFR section 1904.41.

### **ECONOMIC IMPACT ANALYSIS PER GOVERNMENT CODE SECTION 11346.3(b)**

**Evidence Supporting Finding of No Significant Statewide Adverse Impact Directly Affecting Business:** The proposed amendments will not have significant adverse economic impacts on employers.

During its rulemaking process that led up to the July 21, 2023 final rule, OSHA conducted an economic analysis to determine the economic impact on employers to comply with 29 CFR sections 1904.41. According to OSHA, the amendments in the final rule will make the following changes to the current recording and reporting requirements in 29 CFR, Part 1904:

- Establishments that are required to keep injury and illness records under part 1904, that had 100 or more employees in the previous year, and that are in certain designated industries, must electronically submit the required information from the OSHA Log of Work-Related Injuries and

Illnesses form (Form 300) and the OSHA Injury and Illness Incident Report form (Form 301) to OSHA or OSHA's designee, on an annual basis.

OSHA's final rule does not change an employer's obligation to complete and maintain occupational injury and illness records, nor does it change the recording criteria for the records.

OSHA determined that an employer's electronic submission of occupational injury and illness data to OSHA "would be a relatively simple and quick matter" involving, in most cases, these basic steps:

- (1) Logging on to OSHA's web-based submission system
- (2) Entering basic establishment information into the system (the first time only)
- (3) Copying the required injury and illness information from the establishment's records into the electronic submission forms
- (4) Hitting a button to submit the information to OSHA

OSHA's economic analysis of its final rule determined that the average cost to employers who are required to submit their Form 300 and Form 301 data would be \$136 per year.<sup>1</sup>

**Creation or Elimination of Jobs Within the State of California:** The Division does not anticipate that the proposed rulemaking will result in the creation or elimination of jobs in California.

**Creation of New Business, Elimination of Existing Business, or the Expansion of Business in California:** The Division does not anticipate that any businesses in

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<sup>1</sup> Federal OSHA arrived at these cost estimates by dividing the total estimated cost of submission by the estimated number of establishments that would be required to submit data. In its calculation, OSHA estimates 52,092 establishments that would be required to submit data. OSHA looked at the cost for an establishment who submits via batch file and those establishments that submit manually. OSHA estimated batch file submission cost to be \$252,048 and manual submission to be \$6,647,982 with a total cost of \$6,900,030 to submit 766,257 records. OSHA then combined the annualized cost of \$75,781 per year for familiarization and \$122,308 for software upgrade costs to employers submitting batch-files using custom computer software. At a 7 percent discount rate, the estimated total annualized cost of the final rule is \$7,098,120, which yields an average cost of submission of \$136.

California will be created or eliminated because of any financial impact of the proposed rulemaking.

**REASONABLE ALTERNATIVES TO THE REGULATON AND THE DIVISION'S REASON FOR REJECTING SUCH ALTERNATIVES**

The proposed rulemaking reconciles the Division's Log 300 regulations to the parts of the recently-amended federal rule that OSHA is currently implementing. Since the proposed rulemaking must track the new federal mandates under 29 CFR section 1904.37(a), the Division has not identified any reasonable alternatives to the proposed rulemaking. The proposed rulemaking will not have any impact on small businesses as they are not subject of the regulation. There have been no alternatives proposed as less burdensome and equally effective in achieving the purpose of the referenced statutes and federal rules.

**Duplication or Conflict with Federal Laws (California Government Code Section 11346.2(b)(7)):** The proposed amendments are compatible with 29 CFR section 1904.41.

**Inconsistency or Incompatibility with Existing State Regulations:** A review of regulations adopted by the Division and other comparable agencies has been conducted. The Division has determined there are no existing comparable state regulations.