

# The Importance of Good Recordkeeping:

## *Criminal Liability for Job Site Construction Accidents*

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# **Criminal Liability for Job Site Construction Accidents**

*Written by Cheri Turnage Gatlin and Chris Meyer, Burr & Forman LLP*

## **The Importance of Good Recordkeeping**

Under OSHA's recordkeeping regulation, certain covered employers are required to prepare and maintain records of serious occupational injuries and illnesses using the OSHA 300 Log. This information is important for employers, workers and OSHA in evaluating the safety of a workplace, understanding industry hazards, and implementing worker protections to reduce and eliminate hazards.

However, there are two classes of employers that are partially exempt from routinely keeping injury and illness records. First, employers with 10 or fewer employees at all times during the previous calendar year are exempt from routinely keeping OSHA injury and illness records. OSHA's revised recordkeeping regulation maintains this exemption.

Second, establishments in certain low-hazard industries are also partially exempt from routinely keeping OSHA injury and illness records. Due to changes in OSHA's recordkeeping requirements that went into effect January 1, 2015, certain

previously exempt industries are now covered. Construction-industry jobs do not meet this low-hazard threshold.

a. Implementation and enforcement of formal project documentation policies

Site specific safety plans should be used in conjunction with company safety and health programs/manuals, and all applicable state regulations. The existence of formal project document policies is a critical first step. However, unless those policies and procedures are implemented and enforced, they are useless. Policies which define and implement project documentation requirements not only provide a means to direct and record proper training of employees, these policies also protect the company during OSHA—other enforcement agency—investigations by demonstrating company commitment to safety enforcement.

b. Recording of all policy and procedure changes

Under a final rule that became effective January 1, 2017, OSHA revised its requirements for recording and submitting records of workplace injuries and illnesses to require that some of this recorded information be submitted to OSHA electronically for posting to the OSHA website.

In doing so, OSHA took information that employers were already required to collect and is using these data to help keep workers safer and make employers, the public, and the government better informed about workplace hazards. OSHA has

publicly stated it believes that releasing the data in standard, open formats will:

- Encourage employers to increase their efforts to prevent worker injuries and illnesses, and, compelled by their competitive spirit, to race to the top in terms of worker safety; and
- Enable researchers to examine these data in innovative ways that may help employers make their workplaces safer and healthier and may also help to identify new workplace safety hazards before they become widespread. In addition, the final rule includes provisions that encourage workers to report work-related injuries or illnesses to their employers and prohibit employers from retaliating against workers for making those reports.

OSHA expects this new rule will help improve workplace safety through expanded access to timely, establishment-specific injury and illness information for OSHA, employers, employees, employee representatives, potential employees, customers, potential customers, and public health researchers. The rule will also provide OSHA with data to assist the agency in improving allocation of compliance assistance—help OSHA provide to employers who want to improve their safety standards—and enforcement resources, expanding the Agency’s ability to identify, target and remove safety and health hazards, thereby preventing workplace injuries, illnesses and deaths. It will also enable OSHA to conduct more rigorous evaluations of the impact of government injury prevention activities.

In addition, OSHA has indicated that behavioral science suggests that public disclosure of the data will “nudge” employers to reduce work-related injuries and illnesses in order to demonstrate to investors, job seekers, customers, and the broader public that their workplaces provide safe and healthy work environments for their employees. Currently, employers cannot compare their injury experience with other businesses in their industry; they can only compare their experience with their industry as a whole. Access to establishment-specific data will enable employers to benchmark their safety and health performance against industry leaders, encouraging them to improve their safety programs.

Finally, public access to very large sets of workplace injury and illness data should provide public health researchers with unprecedented opportunities to advance the fields of injury and illness causation and prevention research.

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