

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

NOTICE OF PROPOSED RULEMAKING

**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**

PUBLIC PROCEEDINGS: NOTICE IS HEREBY GIVEN that the Division of Occupational Safety and Health (“the Division”) within the Department of Industrial Relations proposes to amend Section 14300.41 of Title 8 of the California Code of Regulations 8 CCR § 14300.41) regarding employers’ duty to record and report occupational injuries and illnesses. The Division proposes to adopt the proposed amendments described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed amendments, on the following date:

Date: April 23, 2024

Time: 10:00 a.m.

**Place: Elihu Harris State Office Building – Room 1
1515 Clay Street, Oakland, CA 94612**

The State Office Building and meeting rooms are accessible to people with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodations to facilitate effective communication for people with disabilities are available upon request. Please contact the Statewide Disability Accommodation Coordinator at 1-866-326-1616 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance. Accommodation requests should be made as soon as possible. Requests for an Assistive Listening System or Communication Access Realtime Translation should be made no later than five (5) days before the hearing.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed amendments described below in the Informative Digest. The Division requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or at 3:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

WRITTEN COMMENT PERIOD: Any interested person, or their authorized representative, may submit written comments relevant to the Proposed Rulemaking. Written comments, regardless of the method of transmittal, must be received by the Division by **11:59 p.m. on April 23, 2024**, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: tmhenson@dir.ca.gov. It is requested that email transmissions of comments, particularly those with attachments, contain the regulation identifier “Recording and Reporting of Occupational Injuries and Illnesses” in the subject line to facilitate timely identification and review of the comment;
2. By mail or hand-delivery to T. Michelle Henson, Staff Counsel, at Cal/OSHA Legal Unit, 1515 Clay Street, Suite 1901, Oakland, California 94612.

All comments, regardless of the method of transmittal, should include the commenter’s name and U.S. Postal Service mailing address or e-mail address to enable the Division to provide the commenter with notice of any changes to the proposed amendments on which additional comments may be solicited.

AUTHORITY AND REFERENCE CITATIONS

Section 14300.41

Authority cited: Sections 50.7, 150(b) and 6410, Labor Code. Reference: Section 6410, Labor Code.

NOTE: Under California Labor Code § 50.7, the Department of Industrial Relations is the state agency designated to administer the California Occupational Safety and Health Act of 1973 (Cal. Lab. Code § 6300 *et seq.*) The California Division of Labor Statistics and Research (“DLSR”), formerly a division within the Department of Industrial Relations, promulgated 8 CCR § 14300.41. This regulation was promulgated by DLSR under the authority of California Labor Code §§ 50.7 and 6410 to fulfill the federal mandate established by 29 CFR §§ 1902.3(j); 1902.7, and 1904.37(a) that California’s

occupational injury and illness recording and reporting requirements under its state plan be “substantially identical” to the federal requirements.

In 2012, Senate Bill 1038 abolished DLSR and amended Labor Code § 150 by transferring its responsibilities under Chapter 7, Subchapter 1, Article 1 of Title 8 of the California Code of Regulations (commencing with Section 14000) to the Division. Labor Code § 150(b), as amended, provides:

To the extent not in conflict with this or any other section, on the date this subdivision becomes operative, the responsibilities of the Division of Labor Statistics and Research that are specified in Subchapter 1 (commencing with Section 14000) and Subchapter 2 (commencing with Section 14900) of Chapter 7 of Division 1 of Title 8 of the California Code of Regulations are reassigned to the Division of Occupational Safety and Health and the responsibilities of the Division of Labor Statistics and Research that are specified in Subchapter 3 (commencing with Section 16000) of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations are reassigned to the Division of Labor Standards Enforcement.

The Division now proposes to amend 8 CCR § 14300.41 under the authority provided in Sections 50.7, 150(b) and 6410 of the Labor Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The federal Occupational Safety and Health Act of 1970 (29 USC § 651 *et seq.*) covers most private sector employers and their employees in all 50 states either directly through the federal Occupational Safety and Health Administration (“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 OSHA. OSHA approves and monitors all state plans and provides funding for those plans. California is a state plan state under 29 CFR 1902 *et seq.* If OSHA establishes a new or revised standard, a state plan must adopt its own standard that is at least as effective as the new or revised federal standard within six months. With regard to OSHA’s standards governing employers’ duties to record and report occupational injuries or illnesses, a state plan must adopt standards that are “substantially identical” to the federal standards. (See 29 CFR §§ 1902.3(j), 1902.7, and 1904.37(a).)

DLSR previously promulgated 8 CCR § 14300.41 to ensure that California’s occupational injury and illness recording and reporting requirements for employers were “substantially identical” to the federal recording and reporting standard. Existing Cal/OSHA rule 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.

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

Because the Division has assumed the rulemaking authority for the corresponding standards in California, it must now amend 8 CCR §14300.41 to ensure that it remains "substantially identical" to the federal regulations.

§ 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 Cal/OSHA rule 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 of this proposed amendment 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.

Anticipated 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.

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

- Encourage employers to abate hazards to prevent occupational 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 occupational injury and illness rates with those of comparable employers;
- Allow investors to compare occupational 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 occupational injury and illness rates of prospective employers.

Evaluation as to Whether the Proposed Regulations Are Inconsistent or Incompatible with Existing State Regulations: The Division has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Division concluded that no other state regulations address the same subject matter.

Explanation of Substantial Differences Between the Proposed Regulations and Comparable Federal Regulations or Statutes: The proposed amendments and additions to section 14300.41 would make California's regulations substantially identical to corresponding federal regulations, 29 CFR section 1904.41, being implemented by federal OSHA.

Forms Incorporated by Reference: None.

MANDATED BY FEDERAL REGULATIONS

The proposed amendments to section 14300.41 are compatible with 29 CFR section 1904.41. Because California is a state plan state under 29 CFR, Part 1902, these proposed amendments are mandated by federal law, which requires that California's requirements for employers to record and report occupational injuries and illnesses be "substantially identical" to the corresponding federal requirements. (See 29 CFR §§ 1902.3(j), 1902.7, and 1904.37(a).)

OTHER STATUTORY REQUIREMENTS

There are no other statutory requirements that are specific to the Division or this type of regulation.

LOCAL MANDATE

The proposals do not impose a mandate on local agencies or school districts. The Division has determined that the proposals do not impose a mandate requiring reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because they do not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 or Article XIII B of the California Constitution.

The California Supreme Court has established that a "program" within the meaning of section 6 or Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed amendments do not require any local agency to carry out the governmental function of providing services to the public, nor do they impose unique requirements on local governments that do not apply generally to all entities in the state.

Furthermore, any new costs associated with the recording and reporting of occupational injuries and illnesses required by the proposed amendments are costs mandated by the federal government. As such, even if the proposed amendments were held to constitute a "new program or higher level of service of an existing program" under section 6 of Article XIII B of the California Constitution, any associated costs would not be considered costs mandated by the state. (See Cal. Gov. Code § 17556(c).)

FISCAL IMPACT

Costs or Savings to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Costs or savings to any state agency: The cost to an individual state agency to comply with the proposals will be less than or equal to \$136 per year. (See Cost Impacts on Representative Person or Business section below.)

There will be no savings.

Other nondiscretionary costs or savings imposed on local agencies: The cost to an individual local agency to comply with the proposals will be less than or equal to \$136 per year (See Cost Impacts on Representative Person or Business section below.)

There will be no savings.

Costs or savings in federal funding to the State: None.

HOUSING COSTS

The proposals will not affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

Although the proposed rulemaking will directly affect covered businesses statewide, the Division anticipates that the statewide adverse economic impact will be insignificant. The Division anticipates that the proposals will have no effect on the ability of California businesses to compete with business in other states because all federal OSHA states and other state plan states will have to adopt substantially identical requirements.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Creation or Elimination of Jobs Within California: The Division concludes that it is unlikely that the proposals will either create or eliminate jobs within California.

Creation of New Business, Elimination of Existing Businesses, or Expansion of Businesses Currently Doing Business in California: The Division concludes that it is unlikely that the proposed amendments will: (1) create new businesses in California; (2) eliminate any existing businesses in California; or (3) result in the expansion of businesses currently doing business in California.

Benefits of the Proposed Amendments to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposals will benefit worker safety and health in California. The added data collection provisions in the proposals will provide more detailed reporting on the extent and severity of injuries and illnesses for the occupational injury and illness data that employers are required to record and report under Article 2. These provisions expand OSHA's, the Division's and public's access to additional specific occupational 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 risks.

The public disclosure of the electronic data submission required by the proposals could also lead to safer workplaces for workers. (See Anticipated Benefits of the Proposed Rulemaking section above.)

The proposals will not otherwise significantly benefit the health and welfare of California's residents and will not likely benefit California's environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Division has determined that the proposed amendments will have some economic impacts on covered employers, but that these economic impacts will not be significantly adverse.

During its rulemaking process that led to the July 21, 2023 final rule, OSHA conducted an economic analysis to determine the economic impact on employers to comply with the new requirement to report injury and illness data electronically. According to OSHA, the amendments in their final rule made the following changes to the prior 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 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.

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; and
- (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 to comply with the electronic reporting of Form 300 and Form 301 data would be \$136 per year.¹

BUSINESS REPORT

The proposed regulations will require subject businesses to report additional occupational injury and illness records to OSHA. This reporting requirement is mandated by federal law. It is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

SMALL BUSINESS DETERMINATION

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).)

ALTERNATIVES STATEMENT: In accordance with Government Code section 11346.5, subdivision (a)(13), the Division must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the

¹Federal 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 sum 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 annual cost of the final rule is \$7,098,120, which yields an average cost of submission of \$136.

Division would be more effective in carrying out the purpose for which the regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

No alternatives were considered because the proposed amendments are mandated by federal law. The proposed amendments are compatible with 29 CFR section 1904.41.

The Division invites interested people to present statements or arguments with respect to alternatives to the proposed amendments at the scheduled hearing or during the written comment period.

CONTACTS: Non-substantive inquiries concerning the proposals or this rulemaking, such as requests for copies of the text of the proposed amendments, and the location of public records, may be directed to Omar Robles at (510) 286-7348 or orobles@dir.ca.gov. Inquiries regarding the substance of the proposed amendments may be directed to T. Michelle Henson at (510) 286-7348 or tmhenson@dir.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE:

The full text of the proposals, and all information upon which the proposed rulemaking is based, are available upon request from the contacts named in this Notice.

As of the date of publication of this Notice, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the proposed text of the regulations, the Economic and Fiscal Impact Statement (Form 399), and a copy of the document entitled “Federal Register, Vol. 88. No. 139, July 21, 2023, pp. 47254-47349.” As public comments are received during the rulemaking process, they will be added to the rulemaking file.

The Division’s rulemaking file is available for inspection and copying throughout the rulemaking process, Monday through Friday, from 9:00 a.m. to 5:00 p.m., at 1515 Clay Street, Suite 1901, Oakland, CA 94612. The full text of the proposals, and the principle documents upon which the proposed rulemaking is based, also may be accessed through the agency’s Internet website at www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

After considering all timely and relevant comments received, the Division may adopt the proposed amendments substantially as described in this Notice. If the Division makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least

15 days before it adopts the amendments as revised. Any such modifications also will be posted on the Division's website.

Please send requests for copies of any modified amendments to the attention of Omar Robles at the above telephone number or e-mail address. The Division will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Omar Robles at the above telephone number or e-mail address. The Final Statement of Reasons may also be accessed on the Division's website at:

www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html.

If adopted, the Proposed Rulemaking will appear in Title 8, California Code of Regulations, Section 14300.41.