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# LEGAL ALERT

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## OSHA Recordkeeping Summary Must Be Posted By February 1 And Is More Important Than Ever

Most employers are required to maintain the Occupational Safety and Health Administration's 300 Logs for workplace injuries and illnesses and post their 2009 annual summary by February 1, 2010. Employers must utilize the annual summary form (form 300A) when complying with the posting requirements. The form is available for downloading from the OSHA website at <http://www.osha.gov>.

What some employers may not appreciate, is that this routine recordkeeping obligation has assumed much greater importance under the current Administration, which is in the midst of a National Emphasis Program selecting employers for highly invasive recordkeeping audits, including review of employee health records, employee interviews, and walk-arounds. Moreover, the current Administration has also expressed an intent to broaden its focus from individual establishments to a corporate-wide review, and these records play a crucial role in doing so.

Accordingly, as you go through the annual routine of completing and posting your summaries, you should carefully audit and correct the last five years of records, as well as check for the common problems OSHA looks for in its audits and any patterns of injuries and illnesses. As we explain below, an executive must certify these results, and should take steps to use the annual posting ritual to review and improve the overall safety and health management process at the location for which the signer is responsible.

### Executive Certification

OSHA's recordkeeping standard requires a certification by a company executive, *in addition* to the signature of the person preparing the summary. OSHA has identified four specific management officials who it considers to be a "company executive" for purposes of certifying the 300A Logs. These individuals are: 1) an owner of the company; 2) an officer of the corporation; 3) the highest-ranking company official working at the establishment; or 4) the immediate supervisor of the highest-ranking company official working at the establishment.

Such an official must certify that they have reviewed the related records and that they reasonably believe, based on their knowledge of the process underlying the development of the data, that the posted



summary is accurate and complete. OSHA describes this requirement as imposing "senior management accountability" for the integrity and accuracy of the reported data.

### Number of Employees and Hours Worked

The annual summary provision requires employers to include a calculation of the annual average number of employees covered by the Log and the total hours worked by all covered employees. The purpose of this requirement is to help employers compare the relative frequency of significant occupational injuries and illnesses at their workplace as compared to other establishments.

### Posting Period

The posting period is for three months, from February 1<sup>st</sup> to April 30<sup>th</sup>.

### Record Review

Before the annual summary is prepared, the recordkeeping rule imposes an express duty on the employer to review the Log (form 300) to verify that entries are complete and accurate. Employers must review the

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records as “extensively as necessary” to ensure their accuracy. OSHA is continuing its 2009 Recordkeeping National Emphasis Program (NEP) and, thus, employers should take time to review the forms for technical errors as well as to review accident reports and other materials and ensure that all recordable incidents have been included. An employer has a duty to update and maintain records for five years.

Finally, you should be aware that employers are under a duty to ensure that the posted annual summary is not altered, defaced or obscured during the entire posting period.

If you have any questions regarding OSHA's emphasis on Part 1904 recordkeeping, or want a quick review of logs, a full recordkeeping audit or training for your recordkeepers, please contact the Fisher & Phillips Workplace Safety and Catastrophe Management Practice Group at 404.231.1400, or the Fisher & Phillips attorney with whom you regularly work.

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