# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_OSHA’s Policy on Enforcement of the Injury Tracking Rule

[Enforcement and Inspection](https://ehsdailyadvisor.blr.com/category/enforcement-and-inspection/) Contributing Editor Friday - March 30, 2018

December 31, 2017, was the deadline OSHA set for employers to submit their injury data for calendar year (CY) 2016. OSHA now says more than half the 350,000 businesses OSHA believes are subject to filing did not do so in time. OSHA now has until June 15, 2018, to issue citations for noncompliance with the submittal requirement.

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On February 21, 2018, OSHA’s director of enforcement issued a memo to regional administrators on interim enforcement procedures for noncompliance. The memo notes that all three types of violations of the requirement are to be cited as other than serious; one citation will carry a penalty while the other two will not.

## ****Rule Widely Misunderstood****

Published in the May 12, 2016, FR, OSHA’s rule to improve tracking of workplace injuries and illnesses requires certain employers to submit injury and illness data for the previous year. Employers subject to OSHA’s recordkeeping regulations are already required to record these data on their on-site OSHA injury and illness forms. Regulated establishments comprise those with 250 or more employees and those with 20 to 249 employees in certain high-risk industries. These establishments must electronically submit to OSHA their Summary of Work-Related Injuries and Illnesses forms (OSHA Form 300A).

OSHA notes that “only a fraction” of the approximately 7 million establishments in the United States are required to submit. The fact that more than half of those did not while more than 60,000 that were not subject to the rule submitted anyway likely indicates widespread misunderstanding of the requirements.

## ****Other-than-Serious Violations****

The memo describes one situation where no citation will be issued.  Specifically, if an employer subject to the rule says it attempted to submit its records electronically but was unable to do so, it must verify this with documentation of e-mail correspondence with the OSHA Help Desk; or with an OSHA National, Regional, or Area Office; or with documentation of other means that were used to contact OSHA. If the proof is provided, the OSHA compliance safety and health officer (CSHOs) is directed to collect the injury and illness records. In this situation, the memo indicates that OSHA will not issue a citation to the employer for failing to submit.

The memo adds that citations will be issued as follows:

* If the employer failed to submit but immediately abates during the inspection by providing a paper copy of the records, an other-than-serious citation will be issued with no penalty.
* If the employer failed to submit its CY 2016 data but shows that it has already submitted its CY 2017 data, an other-than-serious citation will be issued with no penalty.
* If the employer does not produce the records, an other-than-serious citation will be issued with the “appropriate” penalty. OSHA’s maximum penalty for either a serious violation or an other-than-serious violation is $12,934.

## ****Non-responders to Be Identified****

“Illness and injury records play a crucial role in OSHA’s ability to effectively target workplaces where employees are exposed to serious hazards,” the memo states. “Therefore the Agency will work to ensure full compliance with this regulation. In addition to this policy, OSHA is developing an analytic approach to identify non-responders to the CY 2016 data collection process.”