



Risk Management Bulletin

Written by Alex Miller, ARM, OHST

As of February 1, 2021

Major Differences Between the California and Federal Recordkeeping Standards

There are many things that make California a wonderful place to live. One of the things California is known for is its independence and being a place where some governance theories are tested on a large level. The result of this is many times there are regulations that are specific to California. When we are talking about the Recordkeeping Standards, California has many differences from the Federal version. We have outlined these below with the help of Cal-OSHA and their document that can be found here: [California’s Employer Records of Occupational Injury and Illness Highlights](#).

CALIFORNIA STANDARD	FEDERAL STANDARD
<p>Does not have a reporting requirement contained within the recordkeeping regulation. The California reporting requirement for serious occupational injury, illness, or death, are contained within Title 8, Section 342, with no 30-day time frame limit from incident to death.</p>	<p>Has a reporting requirement, for fatalities and multiple hospitalizations as a result of a work-related incident, contained within the recordkeeping regulation. The reporting requirements are in section 1904.39 of the recordkeeping regulation.</p>
<p>SECTION 14300.2 TABLE 1, NOTE: Retention of existing California requirement for employers in SIC Code 781 (Motion Picture Production and Allied Services) to record occupational injuries and illnesses in California. Exceptions are provided for SIC 781 employers regarding time frames for recording and for providing access to records.</p>	<p>SIC Code 781 (Motion Picture Production and Allied Services) are not required to record occupational injuries and illnesses under the Federal OSHA standard.</p>

CALIFORNIA STANDARD

FEDERAL STANDARD

LANGUAGE ADDED TO SECTION 14300.8(A) NOTE:

Note clarifying the scope of the recording requirement for Recording of Needlesticks and Sharps Injuries. The note states that the requirements for recording needlestick injuries are not limited to health care and related businesses.

No such clarifying language included in the Federal OSHA standard.

LANGUAGE ADDED TO SECTION 14300.30:

Retention of existing California requirement to help assure timely availability of records to employees, their representatives, and government representatives when records are kept elsewhere: Additional language states that when keeping records for multiple establishments at a headquarters or other central location employer must have:

- ▶ **14300.30(b)(2)(C)** – the address and telephone number of the central location or headquarters where records are kept available at each worksite; and
- ▶ **14300.30(b)(2)(D)**– personnel available at the central location or headquarters where records are kept during normal business hours to transmit information from the records maintained there as required by Section 14300.35 and Section 14300.40

Not specifically provided for in the Federal OSHA standard.

LANGUAGE ADDED TO SECTION 14300.32 (B)(7):

Retention with modification of existing California requirement for employers to present or mail the annual summary to each employee who does not normally report, at least weekly, to a location where their annual summary is posted. Employers must present or mail the annual summary to the employees, for the establishment where the employees are linked for recordkeeping purposes [as described at 14300.30 (b)(3)]. Applies to employees who receive pay during the February through April posting period.

Federal OSHA standard relies on new longer posting period to assure availability of summary data to employees.

Refer to Appendix 1 for more information.

LANGUAGE ADDED TO SECTION 14300.32 (B)(8):

States that for multi-establishment employers, there is no requirement for posting of annual summaries for those establishments where operations have closed down during the calendar year.

Not retained in new Federal OSHA standard.

CALIFORNIA STANDARD

FEDERAL STANDARD

LANGUAGE ADDED TO SECTION 14300.35 (B)(2)(C):

Requires access to current or stored copies of the Annual Summary, in addition to current or stored copies of the Cal/OSHA Form 300. Copies must be provided to employees, former employees, personal representatives, or authorized representatives by the end of the next business day.

Same requirements except the Federal OSHA standard does not specify that copies of the Annual Summary must be supplied to the requestor(s).

LANGUAGE ADDED TO SECTION 14300.35(B)(2)(C) EXCEPTION:

Requires establishments in SIC Code 781 to provide the current or stored Cal/OSHA Form 300 or Annual Summary, within seven (7) calendar days rather than by the end of the next business day. Copies must be provided to employees, former employees, personal representatives, or authorized representatives.

No equivalent requirement in the Federal OSHA standard.

LANGUAGE ADDED TO SECTION 14300.35(B)(2)(E)(2):

States specifically what personally identifying information must be deleted when authorized employee representatives ask for copies of the Cal/OSHA form 301, Incident Reports, or equivalent forms. The personally identifying information that must be deleted is:

- ▶ Employee name
- ▶ Employee address
- ▶ Employee date of birth
- ▶ Employee date of hire
- ▶ Gender
- ▶ Name of the physician
- ▶ Location where treatment was provided
- ▶ Whether the employee was treated in an emergency room
- ▶ Whether the employee was hospitalized overnight as an in-patient

SECTION 1904.35 states generically what information must be included and also deleted when authorized employee representatives ask for copies of the Federal/OSHA Form 301, Incident Reports.

Information to be included is the section title “Tell us about the case” on the OSHA 301 Form.

All other information on the 301 must be deleted.

Does not mention equivalent forms when referencing the Federal OSHA Form 301.

LANGUAGE ADDED TO SECTION 14300.35 (C)

Retention of existing California requirement (with modification for new privacy provisions) affirming the rights of employees and their representatives to bargain collectively for access to information relating to occupational injuries and illnesses in addition to that information mentioned in section 14300.35.

No such language in the Federal OSHA standard.

CALIFORNIA STANDARD

LANGUAGE ADDED TO SECTION 14300.38 (A) (B)&(C):

Distinguishes between private and public employers with respect to the granting authority for variance petitions.

LANGUAGE ADDED TO SECTION 14300.40 (A)

Provides government representatives access to the original recordkeeping documents and one set of copies free of charge.

FEDERAL STANDARD

SECTION 1904.38 does not distinguish between public and private employers with respect to submitting variance petitions because the Federal standard, in Federal OSHA states, only applies to private employers.

SECTION 1904.40 requires that copies of the records (not originals) be supplied to government representatives upon request, free of charge.

APPENDIX 1

With respect to this particular section, all businesses in California have had to change their work practices to accommodate the effects of COVID-19. Specifically, the number of remote workers has increased exponentially. In many cases, what was two or three remote workers is now two or three hundred remote workers stationed all around the state. From an enforcement perspective, during an inspection the proof of sending the 300(A) log conventionally would be a certified return receipt. This would create not only a paperwork burden for companies, but also a significant extra expense for organizations who are simply trying to stay afloat financially. That being said, we have contacted the Cal-OSHA in an effort to get this rule changed, but given the rulemaking requirements the April 30 deadline would likely have already passed by the time the new rule would be passed. So, we suggested an alternative interpretation of this specific rule so organizations would be allowed to utilize email to accomplish the same objective. Below is the response we received:

Sent: Friday, January 29, 2021 7:46 AM
To: Alex Miller
Subject: Re: Request for Regulation Interpretation

Mr. Miller,

Given the number of employees who are working remotely during the pandemic, employers may email the Form 300A to employees who have access to email.

Eric Berg
 Deputy Chief of Health
 Cal/OSHA Research & Standards
 925-270-9791

This interpretation provided by Eric Berg (Deputy Chief of Health, Cal-OSHA Research and Standards Division) allows companies in California to meet the regulation using email instead of conventional USPS "snail" mail. We would recommend that organizations retain for their records the list of employees who were sent the OSHA 300 (a) Summary in the event of an inspection.

Please contact your Local Safety Services representative or Director of Safety Services for further explanation or if you need assistance moving your organization's safety effort forward.