

Recordkeeping 201: Part 1

Privacy concern cases – when *not* to write a name

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Editor's note: This is the first installment of an occasional series of more advanced topics about recording occupational injuries and illnesses using the OSHA Form 300. This information is directed to people who are new to OSHA recordkeeping activities, who want to review their recordkeeping practices or who want to improve their recordkeeping skills. The previous series about recordkeeping, covering basic information about filling in the OSHA log and creating an annual summary, is available at www.doli.state.mn.us/recordkeeping.html.

Sometimes the right of access to occupational injury and illness information needs to be balanced with an individual's expectation of privacy. All employees, former employees, their personal representatives and their collective bargaining agents can review the OSHA Form 300, the OSHA log. However, some workers may have experienced recordable injuries and illnesses that raise privacy concerns, such as injuries to intimate body parts and mental illnesses. The OSHA recordkeeping requirements address these situations in 29 CFR paragraphs 1904.29(b)(6)-(9). Basically, these paragraphs specify that in certain instances, the privacy of the injured or ill employee can be maintained by entering "privacy case" in the space normally used for the employee's name.



To reduce the amount of decision-making necessary, OSHA requires that *all instances* of certain injuries and illnesses be treated as privacy concern cases and the employer *must not* enter the employee's name on the OSHA log. All instances of the following injuries and illnesses must be handled as privacy concern cases:



1. an injury or illness to an intimate body part or the reproductive system;
2. an injury or illness resulting from a sexual assault;
3. mental illnesses;
4. HIV infection, hepatitis or tuberculosis;
5. needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material; and
6. other *illnesses* may be treated as privacy concern cases if the employee independently and voluntarily requests that his or her name not be entered on the log.

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This is a complete list; no other cases may be handled as privacy concern cases, even if an employee requests his or her name not be listed on the log.

When an OSHA 300 log has privacy concern cases, the employer must also keep a separate, confidential list of these privacy concern cases, including the employee's name and the case number from the OSHA 300 log. This separate list is needed to allow a government representative to

obtain the employee's name during a workplace inspection and to help employers keep track of such cases in the event that future revisions to the entry become necessary.

In some specific situations, coworkers who are allowed to access the log may be able to deduce the identity of the injured or ill worker in a privacy concern case. The recordkeeping requirements permit employers to mask or withhold information that could be used to identify an employee in a privacy concern case. For example, if only one woman works at a location or in a certain department, the employer may leave out the gender and department information.

Employers are required to enter enough information to identify the cause of the injury or illness, but employers may exclude details of an intimate or private nature. For example, a sexual assault case could be described as an "injury from assault," and an injury to a reproductive organ could be described as a "lower abdominal injury." Reproductive disorders, certain cancers, contagious diseases and other disorders that are intimate and private in nature may also be described in a general way to respect privacy concerns without sacrificing the descriptive value of the recorded information.



Next installment:
Records access and information disclosure