

OSHA Issues New Guidance on Reporting COVID-19 in the Workplace

by Brad R. Kolling - Wednesday, April 15, 2020



COVID-19 can be a recordable illness under the Occupational Safety and Health Act if a worker is infected as a result of performing work related duties. This can be difficult to discern in areas with a higher degree of community transmission.

Reporting Requirements

The Occupational Safety and Health Administration (OSHA) requires that certain work-related injuries and illnesses be recorded. This includes COVID-19 if all of the following are true:

1. There is a confirmed case of COVID-19 as defined by the Centers for Disease Control (CDC);
2. The case is work-related as defined by [OSHA regulations](#) which state that an injury or illness is work-related “if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness”; and
3. The case involves one or more of OSHA’s [general recording criteria](#), which are:
 - (i) Death.;
 - (ii) Days away from work;
 - (iii) Restricted work or transfer to another job;
 - (iv) Medical treatment beyond first aid;

(v) Loss of consciousness;

(vi) A significant injury or illness diagnosed by a physician or other licensed health care professional.

New Guidance

OSHA provided **enforcement guidance** on April 10, 2020 stating that employers in the healthcare industry, emergency response organizations (emergency medical, firefighting, and law enforcement services), and correctional institutions must continue to make individualized determinations of work-relatedness of COVID-19. However, until further notice, OSHA will not enforce require other employers to make that same determinations except where:

1. There is objective evidence that a COVID-19 case may be work related. An example would include where a number of cases develop among workers who work closely together without an alternate explanation; and
2. The evidence was reasonable available to the employer. Examples of reasonable available evidence include information given to the employer by employees, as well as information that an employer learns regarding its employees' health and safety in the ordinary course of managing its business and employees.

OSHA obviously recognizes how hard it is for most employers to figure out whether any particular workers contracted COVID-19 due to exposures at work. They explain their decision to relax their regulatory grip in this area as an effort to:

help employers focus their response efforts on implementing good hygiene practices in their workplaces, and otherwise mitigating COVID-19's effects, rather than on making difficult work-relatedness decisions in circumstances where there is community transmission.

Bottom Line

Through this guidance, OSHA appears to take the position that for the time being, other than the specifically enumerated employment groups, COVID-19 is presumed to be not work related for purposes of OSHA recording requirements.