

OSHA Revises Guidance for Recording COVID-19 Cases

By Nathan Pangrace

On May 19, 2020, the Occupational Safety and Health Administration (OSHA) issued revised enforcement guidance for recording cases of COVID-19. Generally, OSHA requires certain high-risk industries, such as manufacturing, to record work-related injuries and illnesses. Employers with 10 or fewer employees and certain employers in low hazard industries have no recording obligations.

The new guidance clarifies that employers are responsible for recording confirmed cases of COVID-19 when the cases are “work-related.” OSHA recognizes that it may be difficult for employers to determine whether a COVID-19 illness is work-related because of the nature and ubiquity of the disease. This is especially true when an employee experiences potential exposure both in and out of the workplace.

OSHA’s new guidance attempts to provide certainty to employers by explaining the factors OSHA will consider in determining work-relatedness. These factors include, among other things, the reasonableness of the employer’s investigation. Employers are not expected to undertake extensive medical inquiries because of employee privacy concerns and employers’ lack of medical expertise. Instead, OSHA recommends employers ask the employee how he believes he contracted COVID-19, discuss with the employee his work and out-of-work activities that may have led to the illness, and review the employee’s work environment for potential exposure.

According to OSHA, certain types of evidence may weigh in favor of or against work-relatedness. An employee’s COVID-19 illness is likely **work-related** when (1) several cases develop among workers who work closely together, (2) the employee contracts the illness shortly after lengthy, close exposure to a customer or coworker who has COVID-19, or (3) the employee’s job duties include having frequent, close exposure to the public in an area with ongoing community transmission.

An employee’s COVID-19 illness is likely **not work-related** if (1) he is the only worker to contract COVID-19 in his vicinity and his job duties do not include having frequent contact with the general public, or (2) he closely and frequently associates outside the workplace with an individual who has COVID-19, is not a coworker, and exposes the employee while infectious.

An employer does not need to record a case of COVID-19 if, after a reasonable and good faith inquiry, it cannot determine whether it is “more likely than not” that exposure in the workplace caused the illness. Employers who fail to promptly record work-related illnesses, however, may be subject to OSHA citations and monetary penalties.

We will continue to keep you informed as OSHA updates its guidance for employers on issues related to COVID-19. Should you have any questions, please contact one of the listed Roetzel attorneys.

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