



OSHA Reporting and Recordkeeping for COVID-19 at the Workplace

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Employers may be liable for failing to file incident reports and properly record employees affected by COVID-19 on OSHA 300 and 300A logs. If it can be shown the illness is contracted at work, OSHA may expect the illness to be recorded as a work-related illness and reported in the event of death or hospitalization.

Covered Illnesses

Under OSHA reporting requirements revised by the Obama Administration, employers must promptly report and record certain work-related illnesses. Employers must file incident reports and maintain records for any fatality or in-patient hospitalization due to a "work-related incident." 29 CFR 1904.39(a)(1)-(2). The term "incident" is defined broadly by OSHA, see **Incident Investigation**, as "an unplanned, undesired event" that adversely affects completion of a task, and every employer "must consider an injury or illness to be work-related if an event or exposure in the work environment either cause or contribute to the resulting condition." 29 CFR 1904.5(a).

Applying these reporting requirements when an employee tests positive for COVID-19 may not be easy. The COVID-19 virus is likely an "incident" to be investigated, but may not be "work-related." Where the employer can show the illness involves signs or symptoms that became evident at work but is solely the result of exposure to the virus outside the workplace, reporting may not be triggered. 29 CFR 1904.5(b)(2). The problem, of course, is that where the employee was exposed may be nearly impossible to determine.

That the coronavirus is transmitted broadly in the community and in society without specific work-related practices is not determinative, according to OSHA. While common colds and flu infections acquired at work are exempt from reporting requirements, OSHA regulations state "contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work." 29 CFR 1904.5(b)(2)(viii) (emphasis added). OSHA will likely view COVID-19 exposure as work-related in the same way, "if the employee is infected at work."

Reporting and Recordkeeping Requirements

The reporting and recordkeeping requirements for covered illnesses may require prompt action and detailed records even in light of the uncertainty associated with COVID-19. Accordingly, employers may want to plan now to address a potential COVID-19 infection.

Employers must promptly report certain work-related illnesses by filing Incident Reports with OSHA within prescribed timeframes. The covered employer is obligated to contact OSHA and submit verbal or online Incident Reports within eight (8) hours after the death of any employee and within twenty-four (24) hours of the in-patient hospitalization of any employee due to a work-related illness. The information OSHA will require includes the nature of the illness, how the exposure occurred and a description of how the exposure is "work-related." Health care facilities will be hit hardest by this standard.

Each employer is also required by OSHA Standard 1904 to keep records of fatalities, injuries and illnesses considered to be "work-related." If the COVID-19 illness is determined to be work-related and results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid or loss of consciousness, then the employer must document the illness on the company's OSHA Form 300 Log within seven days of receiving indications a recordable illness has occurred. Each year, the employer must include covered illnesses on the plant's OSHA Form 300A Summary. 29 CFR 1904.41(b)(1). The company is also required to record employee illnesses diagnosed by a physician or other licensed health care professional, even if they do not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid or loss of consciousness. Id. Any of these outcomes are possible if an employee exhibits COVID-19.

Regardless of the record submission requirements, OSHA has general authority to request that an employer produce OSHA Form 300 Logs and Form 300A Summaries at any time and generally without cause. Accordingly, do not be surprised if OSHA's next visit includes inquiry about employee illnesses related to COVID-19.

Conclusion and Next Steps

In the event a COVID-19 case is traced to exposure at your workplace, you may be required to include the illness on OSHA Form 300 Log and 300A Summaries. A company must report the incident directly to OSHA if the employee dies or is hospitalized. Employers with between 20 and 250 employees must report the Summaries to OSHA annually.

Employers may wish to plan now to address the risk of exposure to their employees by following OSHA guidance for employers:

Step 1: Develop an Infectious Disease Preparedness and Response Plan.

Step 2: Prepare to Implement Basic Infection Prevention Measures.

Step 3: Develop Policies and Procedures for Prompt Identification and Isolation of Sick People, if Appropriate.

Step 4: Develop, Implement, and Communicate about Workplace Flexibilities and Protections.

Step 5: Provide Personal Protection Equipment.

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