



Employers Required to Determine Whether COVID-19 is Work-Related Under New OSHA Rule

If you have any questions regarding COVID-19, please do not hesitate to contact our Carr Allison COVID-19 Response Team.

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[Carr Allison COVID-19 Response Team](#)

The United States Department of Labor Occupational Safety and Health Administration (OSHA) announced a major change in employer recording obligations on May 19, 2020 with regard to COVID-19. The announcement is available [HERE](#).

Typically, employers are required to timely notify OSHA if an employee is killed on the job or suffers a work-related hospitalization, amputation or loss of an eye. Employers must generate and maintain records, however, of all serious work-related injuries and illnesses.

In guidance issued in April, OSHA indicated that employers would not be required to determine whether COVID-19 cases were work-related *unless*:

- There was objective evidence that a COVID-19 case may be work-related, such as several cases developing among workers who worked closely together without an alternative explanation; and
- The evidence regarding relatedness was reasonably available to the employer. Examples of reasonably available evidence included information given to the employer by employees and information that an employer might learn regarding employee health and safety in the ordinary course of managing its business and employees.

Beginning May 26, 2020, however, employers will be required to actively determine whether cases of COVID-19 are work-related and, if so, they must be recorded as such. Employers must record each case of COVID-19 in the workplace *if*:

- The case is a confirmed case of COVID-19, as defined by the CDC;
- The case is work-related as defined by 29 CFR § 1904.5¹ ; and
- The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.

OSHA acknowledged the tremendous difficulty associated with determining whether an employee actually contracted COVID-19 in the workplace. Employers are now required, however, to investigate cases and consider “reasonably available evidence” when determining work-relatedness. While employers are not required to “undertake extensive medical inquiries,” they are expected to ask employees how they think the virus was contracted and what activities employees have engaged in that may have led to the infection. In addition, employers must review the work environment for likely exposure opportunities, including other employees who were infected with COVID-19.

¹Under 29 CFR § 1904.5, a condition is deemed 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. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment.”

The following guidance was offered to assist in determining the work-relatedness of COVID-19 cases among employees for OSHA recording purposes:

- COVID-19 illnesses are likely work-related when several cases develop among workers who work closely together and there is no alternative explanation.
- An employee's COVID-19 illness is likely work-related if it is contracted shortly after lengthy, close exposure to a particular customer or coworker who has a confirmed case of COVID-19 and there is no alternative explanation.
- An employee's COVID-19 illness is likely work-related if his job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation.
- An employee's COVID-19 illness is likely not work-related if she is the only worker to contract COVID-19 in her vicinity and her job duties do not include having frequent contact with the general public, regardless of the rate of community spread.
- An employee's COVID-19 illness is likely not work-related if he, outside the workplace, closely and frequently associates with someone (e.g., a family member, significant other, or close friend) who (1) has COVID-19; (2) is not a coworker, and (3) exposes the employee during the period in which the individual is likely infectious.

If an employer conducts a reasonable and good faith inquiry into the above and is unable to determine whether it is "more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19," the employer is not required to record the COVID-19 illness.

The Rule issued by OSHA regarding COVID-19 and work-relatedness will remain in effect until further notice. OSHA pointed out that, just because an employer is required to record cases of work-related COVID-19 infections, the mere recording does not, by itself, mean that an employer violated OSHA standards. Regardless of any recording obligations, employers were encouraged to do everything possible to protect the health and safety of all employees while in the workplace.

We will continue to monitor this and other developments concerning COVID-19. If you have any questions or need assistance, please let us know. We will be happy to help.