

Recording of COVID-19 Work-Related Illness Under the Occupational Safety and Health Administration's (OSHA) Recordkeeping Requirements

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Version 1.0

Recordkeeping Requirements for OSHA 300 Logs

Background

As with H1N1 and other uncommon communicable diseases, OSHA considers COVID-19 to be an “illness” under its recordkeeping regulation (29 C.F.R. Part 1904) and, thus, potentially recordable on an employer’s OSHA 300 Log. Under OSHA’s recordkeeping regulation, when an employee contracts an illness the employer must consider if it is “work-related.” An 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.

Work-relatedness is presumed for illnesses that result from events or exposures in the work environment, unless certain exceptions apply. One of those exceptions is that the illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs *outside* of the work environment. Thus, if an employee develops COVID-19 *solely* from an exposure outside of the work environment, it would *not* be work-related, and thus not recordable.

As Related to COVID-19

With the community transmission of COVID-19 in many parts of the country and the presence of asymptomatic infected persons, it may be challenging for employers to determine if an employee’s confirmed COVID-19 diagnosis is work-related. In response to this concern, on April 10, OSHA issued [interim enforcement guidance](#) on when an employer should record a confirmed COVID-19 diagnosis for purposes of OSHA’s recordkeeping requirements.

In the guidance, OSHA states that only confirmed cases of COVID-19, as [defined](#) by the Centers for Disease Control and Prevention (CDC), should be recorded. OSHA also reiterates that only work-related cases should be analyzed and these cases must still meet the severity criteria of the rule (i.e., cases involving one or more of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or a significant injury or illness diagnosed by a physician or other licensed health care professional).

Some companies have implemented precautionary measures to screen employees for symptoms of illness. Directing an employee to go home or seek medical advice because the employee is displaying potential symptoms of illness does not trigger the OSHA recording requirement. OSHA’s recordkeeping requirements require a confirmed positive COVID-19 test per the [CDC guidelines](#).

Establishing “Work-Related” COVID-19 Illness

In the aforementioned enforcement guidance, OSHA acknowledges potential challenges certain employers, such as food manufacturing facilities, distribution centers, wholesale and retail outlets, may experience when determining whether an employee was exposed to COVID-19 at the workplace or outside of the workplace. For those reasons, OSHA stated it will not enforce the recordkeeping requirements for COVID-19 work-related determinations on those employers except in cases where:

1. There is *objective evidence* that a COVID-19 case may be work-related. This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and
2. The evidence was *reasonably available* to the employer. For purposes of this memorandum, examples of reasonably 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.

Determining whether an employee's positive COVID-19 illness is work-related and recordable under OSHA's recordkeeping requirements is an exercise best made in conjunction with counsel. Companies may find some of the ideas below useful in planning how a company evaluates the likelihood of a workplace exposure, but this information is not legal advice and not intended to replace actual consultation with counsel.

- *Covid-19 Clusters.* OSHA's interim enforcement memorandum suggests that work-related exposures may occur where there are clusters of confirmed positive COVID-19 cases. In the course of managing their operations, companies should track broad trends of COVID-19 cases within their facilities. Should a cluster of confirmed positive COVID-19 cases arise in a specific area of a facility, the company may want to perform further investigation as to the origins of the cases, to eliminate other obvious reasons for cluster development. The presence of a cluster alone will not necessarily trigger recordability under OSHA's guidance, but it should cause a further investigation by the company.
- *Community Spread.* The extent to which there is widespread community transmission of COVID-19 should also be considered by companies. "Hot spots" for COVID-19 transmission may suggest employee exposure *outside* of work, as opposed to within the work environment. This would be even more likely where there are no clusters of cases within the facility.
- *Preventative Measures.* The CDC and trade associations have provided guidance and best practices to help food manufacturing facilities, distribution centers, wholesale and retail outlets, minimize the spread of COVID-19 in the workplace.(links) These risk-based prevention strategies include physical or social distancing; enhanced sanitation and disinfecting measures; personal protective equipment (PPE), face covering protocols; reconfigurations of break areas, entry processes, line speeds/configurations, etc; and employee and visitor screening protocols. The extent to which a company has

implemented these practices throughout a facility and individual duty stations may be useful in weighing the overall risk of COVID-19 transmission between employees.

- *Information Gathering.* OSHA’s enforcement guidance provides that employers may consider “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.” For those companies implementing company policies for temperature checks and employee health screenings, or other communication mechanisms, information provided by employees may provide the employer with information of other potential sources for an employee’s illness. Companies should be sure to keep any personal employee medical information received confidential, to the extent required by state or federal law.

Any review of a company’s recordkeeping decision would have the benefit of hindsight, thus contemporaneous documentation is always recommended to memorialize company decisions. A clear company policy and decision-tree establishing what questions are asked of employees may also aide in providing consistent documentation of what information was available to the employer. Also, if a company is provided with additional probative information regarding the situation or employee at a later time, that information should be adequately documented, retained and recordkeeping modified as needed.

Finally, for employees with job duties that enable them to telework from home, a work-related illness must be directly related to performance of company work rather than to the general home environment or setting¹. Absent physical contact with other employees in the home environment for the performance of company work, a positive COVID-19 diagnosis would not be work-related for employees working solely from home.

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¹ <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.5>