

## **OSHA Guidance on Recording and Reporting Obligations for COVID-19**

On September 30, 2020, the Department of Labor's Occupational and Safety Health Administration (OSHA) released new [Frequently Asked Questions](#) (FAQ's) regarding an employer's obligation to report and record work-related COVID-19 cases.

### **Reporting COVID-19 Cases to OSHA**

In the released FAQs, OSHA defines the term "incident" that triggers the time period for calculating whether a case meets the reportability criteria. OSHA states that the term "incident" means "an exposure to COVID-19 in the workplace." An "incident" is when an employee is exposed to the virus at work, as opposed to when the employee develops symptoms or tests positive.

### **Reportable incidents and timeframes include:**

1. When an employee has an in-patient hospitalization which occur within 24 hours of an exposure to COVID-19 at work. This must reported within 24 hours of determination that the hospitalization was due to a work-related exposure to COVID-19.
2. When there is an employee fatality within 30-days of exposure to COVID-19 at work. The employer must report the fatality within eight hours of knowing both that the employee has died and that the cause of death was due to a work-related case of COVID-19.

OSHA defines in-patient hospitalization as: *"a formal admission to the in-patient service of a hospital or clinic for care or treatment."* Providers do not have to report an in-patient hospitalization that involves only observation or diagnostic testing.

### **How to [report to OSHA](#) a fatality or in-patient hospitalization**

You can report fatality or in-patient hospitalization of an employee with a confirmed, work-related case of COVID-19 using any one of the following:

- Call the nearest OSHA office;
- Call the OSHA 24-hour hotline at 1-800-321-OSHA (6742); or
- By electronic submission, report online.

### **To [report to OSHA](#) you will need the following information:**

- Business name;
- Name(s) of employee(s) affected;
- Location and time of the incident;
- Brief description of the incident; and

- Contact person and phone number so that OSHA may follow-up with you (unless you wish to make the report anonymously).

OSHA emphasizes that the interpretations above apply only to the **reporting** of COVID-19 cases. “Employers who are required to keep OSHA injury and illness records must still record work-related confirmed cases of COVID-19,” as required by other provisions of the regulation.

### **Recording COVID-19 Guidance in OSHA 300 Logs**

On May 19, 2020 the Department of Labor’s Occupational Safety and Health Administration (OSHA) updated its [guidance](#) from April 13, 2020 recording cases of COVID-19 in their [300 Logs](#) for reporting occupational injuries and illnesses. This new guidance took effect May 26, 2020 and provided information for what surveyors will utilize to assess an employer’s efforts to determine if the case was work-related. The guidance includes all long term care providers; assisted living, skilled nursing facilities, and providers caring for individuals with intellectual and developmental disabilities.

In the memo, OSHA restated that COVID-19 is a recordable illness and employers are responsible for recording cases of COVID-19 if:

1. the case is a tested-positive confirmed case of COVID-19, as defined by Centers for Disease Control and Prevention (CDC);
2. the case is "work-related," which is defined as an event or exposure that either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness (this includes COVID-19 acquired from a co-worker or resident); and
3. the case involves 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
  - a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

Because of the difficulty with determining work-relatedness, OSHA is exercising enforcement discretion to assess employers' efforts in making work-related determinations. In determining whether an employer has complied with this obligation and made a reasonable determination of work-relatedness, Compliance Safety and Health Officers are advised to consider the following:

- The reasonableness of the employer's investigation into work-relatedness.
- The evidence available to the employer.
- The evidence that a COVID-19 illness was contracted at work.

If, after the reasonable and good faith inquiry described above, the employer cannot 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 does not need to record that COVID-19 illness.

NOTE: For COVID-19 infections, “work-related” is very difficult to determine, as mentioned above, since it has a long incubation period (i.e., 2-14 days) and is so easily transmissible in the community between individuals who are asymptomatic. Often healthcare workers’ COVID-19 infections are attributable to community spread rather than “work-related”. Providers need to do their best in determining “work-related” cases but may want to err on the side of over reporting to OSHA even though it may not be “work-related”. Providers should consider contacting their legal counsel on this issue.

Employers of workers in the healthcare industry must continue to make work-relatedness determinations pursuant to [29 CFR § 1904](#). Healthcare employers will need to take a closer look at confirmed cases of COVID-19 in employees and note that there may be non-cluster scenarios where they must record the illness.