

Publications

OSHA Issues New Guidance on Recording Cases of COVID-19

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On May 19, 2020, the Occupational Safety and Health Administration (OSHA) issued two “updated” enforcement memos on injury reporting and OSHA’s enforcement response. OSHA’s guidance on these issues has shifted over time, and these newest iterations take effect on May 26, 2020. According to OSHA, both guidance memos are “intended to be time-limited to the current COVID-19 public health crisis.”

OSHA Injury Reporting

Under OSHA’s recordkeeping requirements, COVID-19 is a recordable illness, and employers normally responsible for recording employee injuries and illnesses are responsible for recording cases of COVID-19, if all of the following apply:

1. **The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention.**
2. **The case is work-related as defined by the OSHA regulations.**
3. **The case involves one or more of the general recording criteria set forth in the regulations.**

When an employer determines that a COVID-19 illness is work-related and therefore recordable, the case should be coded as a respiratory illness on OSHA Form 300. The employer must abide by an employee’s request to not include his or her name on the log.

Given the nature of the disease and ubiquity of community spread, it can be extremely difficult to determine whether an employee contracted COVID-19 while at work. Accordingly, OSHA will exercise “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, OSHA will consider (1) the reasonableness of the employer’s investigation into work-relatedness; (2) the evidence available to the employer; and (3) the evidence that COVID-19 was contracted at work. If the employer

conducts a reasonable and good faith inquiry and cannot determine whether it is more likely than not that COVID-19 exposure occurred in the workplace, then the employer does not need to record that COVID-19 illness.

For example, if multiple employees who work closely with one another are diagnosed with COVID-19, then OSHA would expect that those cases be recorded, absent a detailed employer investigation that revealed alternative explanations for the infections.

On the other hand, if a single employee is diagnosed with COVID-19, and that employee does not have regular contact with customers or other non-employees while at work, then it is unlikely that the infection occurred at work and the illness would not need to be recorded.

OSHA Inspections and Enforcement

With respect to enforcement, OSHA has a two-prong framework. In geographic areas where community spread of COVID-19 has significantly decreased, OSHA will use the inspection planning policy that OSHA relied on before the start of the COVID-19 health crises. However, OSHA will continue to prioritize COVID-19 cases.

In geographic areas experiencing either sustained elevated community transmission or a resurgence in community transmission of COVID-19, OSHA will continue prioritizing COVID-19 fatalities and imminent danger exposures for inspection. Particular attention for on-site inspections will be given to high-risk workplaces, such as hospitals and other healthcare providers treating patients with COVID-19, as well as workplaces with high numbers of complaints or known COVID-19 cases.

Contact your Vorys lawyer if you have questions about your workplace safety obligations in light of COVID-19.

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VORYS COVID-19 TASK FORCE

Outside of this new law, employers continue to face myriad issues as COVID-19 continues to spread and impact communities and workplaces (some of these issues are addressed in our prior alerts [located here](#)). We will continue to keep you posted on any important developments. In the meantime, if you have any questions regarding this new law or any other aspect of COVID-19, please contact your Vorys lawyer.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.