

**OSHA has issued new updates
for recording COVID19 illnesses.**

*The new requirements take effect May 26, 2020
and remain in effect until further notice.*

Details of the New COVID19 Illness Recording Rules

Recordable Basics: Under OSHA's recordkeeping requirements, COVID19 is a recordable illness, and employers are responsible for recording cases of COVID19, if:

1. The case is a confirmed case of COVID19, as defined by the Centers for Disease Control and Prevention (CDC).
2. The case is work-related (defined by 29 CFR § 1904.5); **and**
3. The case involves one or more of the general recording criteria (29 CFR § 1904.7.[4]).

What does this mean for employers?

When a COVID19 illness is suspected or is claimed to be work related, several factors must be considered when deciding if the illness is indeed a recordable COVID19 illness.

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, employers should apply the following considerations:

- **The reasonableness of the employer's investigation into work-relatedness.** Employers, especially small employers, should not be expected to undertake extensive medical inquiries, given employee privacy concerns and most employers' lack of expertise in this area. It is sufficient in most circumstances for the employer, when it learns of an employee's COVID19 illness, (1) to ask the employee how he believes he contracted the COVID19 illness; (2) while respecting employee privacy, discuss with the employee his work and out-of-work activities that may have led to the COVID19 illness; and (3) review the employee's work environment for potential SARS-CoV-2 exposure. The review in (3) should be informed by any other instances of workers in that environment contracting COVID19 illness.
- **The evidence available to the employer.** The evidence that a COVID19 illness was work-related should be considered based on the information reasonably available to the employer at the time it made its work-relatedness determination. If the employer later learns more information related to an employee's COVID19 illness, then that information should be taken into account as well in determining whether an employer made a reasonable work-relatedness determination.
- **The evidence that a COVID19 illness was contracted at work.** Employers should take into account all reasonably available evidence, in the manner described above, to determine whether an employer has complied with its recording obligation. This cannot be reduced to a ready formula, but certain types of evidence may weigh in favor of or against work-relatedness. For instance:
 - COVID19 illnesses are likely work-related when several cases develop among workers who work closely together and there is no alternative explanation.
 - An employee's COVID19 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 COVID19 and there is no

alternative explanation.

- An employee's COVID19 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 COVID19 illness is likely not work-related if she is the only worker to contract COVID19 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 COVID19 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 COVID19; (2) is not a coworker, and (3) exposes the employee during the period in which the individual is likely infectious.
- Employers should give due weight to any evidence of causation, pertaining to the employee illness, at issue provided by medical providers, public health authorities, or the employee herself.

Check that your illness investigation procedures are following proper protocol:

1st, investigate;

2nd, decide if the illness is work related; and

3rd, record illness if determined to be work related.

Remember that finding that an illness is indeed a COVID19 recordable case does NOT mean that any OSHA standards were violated. Violations are based on properly complying with requirements and guidelines from OSHA, the CDC and state health authorities, and state executive orders that are in effect to help prevent COVID19 illnesses from spreading.



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