

Department of Labor Clarifies Rules for Employer Recording of COVID-19 Cases

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April 15, 2020

The U.S. Department of Labor's Occupational Safety & Health Administration has released a new memo addressing employers' obligations under the Occupational Safety & Health Act ("OSHA") with respect to COVID-19. The new memo clarifies the rules for employers' recording of COVID-19 cases among employees but suspends the enforcement of certain requirements.

The Administration's memo makes clear that COVID-19 is an OSHA recordable illness, and employers continue to be required to record all cases of COVID-19 among its employees. However, with a few exceptions, the Administration is suspending enforcement of a rule that would require employers to make a determination as to whether an employee's case of COVID-19 is work-related. The memo acknowledges the difficulty employers face in ascertaining whether cases of COVID-19 among its employees resulted from exposure at work and indicates that the new enforcement guidance is meant to help employers focus their response efforts on mitigating the spread of COVID-19, including by implementing good hygiene practices, rather than investigating the circumstances of an employee's infection. The suspension is effective immediately and will remain in effect until further notice.

The suspension on enforcement of the work-relatedness determination does not apply to employers in the healthcare, emergency response organizations (such as emergency medical, firefighting and law enforcement), and correctional institutions, which must continue to make those determinations. Further, employers must continue to make the work-relatedness determination where: (1) there is objective evidence that a COVID-19 case may be work-related; for example, where a cluster of cases develop among workers who work closely together; and (2) the evidence was reasonably available to the employer. Examples of "reasonably available evidence" include information provided by employees and information gathered by the employer in the ordinary course of managing its business and employees.

While OSHA's memo does not explicitly address employers' obligations to report confirmed cases of COVID-19 to OSHA, the existing reporting regulation read in combination with OSHA's memo offers some guidance. The reporting regulation requires employers to report employee deaths and in-patient hospitalizations that are the result of a "work-related incident." Because OSHA's new guidance relieves employers from making a work-relatedness determination in many cases, employers' reporting obligations are less likely to be triggered. However, employers should continue reporting confirmed cases of COVID-19 where, when applying OSHA's new guidance, they have reached a determination that the illness is work-related.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney.

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