

June 2020

OSHA Guidance on COVID-19

In guidance effective May 26, 2020, OSHA has [clarified](#) that Coronavirus can be a recordable illness if a worker is infected as a result of performing their work-related duties.

Overview

Employers are responsible for recording cases of COVID-19 if all of the following are met:

1. The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention (CDC);
2. The case is work-related as defined by [29 CFR §1904.5](#);
3. The case involves one or more of the general recording criteria.

Confirmed Case

A confirmed case of COVID-19 means an individual with at least one respiratory specimen that tested positive for SARS-CoV-2, the virus that causes COVID-19. Employers should wait until an employee has a confirmed COVID-19 diagnosis before starting a recordability analysis.

When is COVID-19 Work-Related?

In general, an employer must consider an injury or illness to be 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-



Did you know? According to OSHA guidelines, records related to work-related illnesses must be retained for length of employment + 30 years.

General Recording Criteria

An employer must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. An employer must also consider a case to meet the general recording criteria if it involves 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.

relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an [exception](#) specifically applies.

To determine whether a Coronavirus diagnosis is work-related and therefore must be recorded, employers must make reasonable efforts to investigate the cause of the illness. This could include asking the employee limited questions about how he/she thinks the virus was contracted, and about any possible exposure(s) prior to the diagnosis, arising from both work and non-work activities.

The employer should also consider whether workplace

exposure was possible, including considering the company's efforts to enforce CDC guidelines to mitigate spread of the virus, whether other employees in the working area have tested positive, and the employee's exposure to the public.

Employers should not conduct extensive investigations into non-work activities and instead should ask reasonable questions and consider readily available evidence. Additionally, employers should not ask broad medical questions that could violate an employee's rights under HIPAA and other laws.

Please see the next page for additional coverage of OSHA's COVID-19 guidance.

Recent Guidance for Compliance Officers

In addition, OSHA updated its interim enforcement response plan for COVID-19 with instructions and guidance to Area Offices and compliance safety and health officers (CSHOs) for handling COVID-19-related complaints, referrals, and severe illness reports. Effective May 26, 2020, the previous [memo](#) on this topic was rescinded, and this new update goes into and remains in effect until further notice.

As workplaces reopen, OSHA will continue to ensure safe and healthy conditions pursuant to the following framework.

In areas where **community spread of COVID-19 has significantly decreased**, OSHA will return to its pre-COVID-19 inspection planning policy when prioritizing reported events for inspections, except that:

- OSHA will continue to prioritize COVID-19 cases;
- OSHA will utilize non-formal phone/fax investigations or rapid response investigations in circumstances where it has historically performed such inspections (e.g., to address formal complaints) when necessary to assure effective and efficient use of resources to address COVID-19-related events; and
- In all instances, CSHOs must utilize the appropriate precautions and personal

protective equipment (PPE) when performing COVID-19-related inspections.

In areas where there is sustained **elevated community transmission** or a resurgence in community transmission of COVID-19, Area Directors will exercise their discretion, including consideration of available resources, to:

- 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. In addition:
 - Where resources do not allow for on-site inspections, the inspections will be initiated remotely with an expectation that an on-site component will be performed if/when resources become available.
 - Where neither an on-site nor remote inspection is possible, OSHA will investigate using a rapid response investigation to identify any hazards, provide abatement assistance, and confirm abatement.
 - OSHA will develop a program to conduct monitoring inspections from a randomized sampling of

cases where inspections were not conducted due to fatality or imminent danger resource limitations.

- Utilize non-formal phone/fax investigation instead of an on-site inspection in industries where doing so can address the relevant hazard(s).
- Ensure that CSHOs utilize the appropriate precautions and personal protective equipment to protect against potential exposures to COVID-19.

Both the guidance and plan are intended to be time-limited to the current COVID-19 public health crisis.

Reporting COVID-19 Cases

COVID-19 cases must be reported if they are **work-related** and result in a **fatality** (within eight hours), inpatient hospitalization, amputation or loss of an eye (within 24 hours).

The reporting periods begin as soon as the employer learns about the work-related incident, even if there is a delay between the time the incident takes place and the time the incident is reported to the employer.

If the OSHA area office is closed, employers are expected to report these incidents by phone at **1-800-321-OSHA (6742)** or on [OSHA's public website](#).

For further guidance on OSHA related questions, please contact PDCM's OSHA Safety Consultants for assistance.

HRConnect FAQ

Q: How should we respond to a racially insensitive comment by an employee?

A: A racially insensitive comment could be considered unlawful harassment. Since you have a duty as an employer to stop unlawful harassment, we recommend that you investigate the alleged comment and, if you find evidence to support that your harassment or other conduct policies have been violated, discipline the employee who made it. Be sure to document your findings and any disciplinary actions taken.



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