

NEWS & INSIGHTS

OSHA issues temporary enforcement guidance related to COVID-19

INSIGHTSLEGAL UPDATE

APRIL 15, 2020



The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

This week the Occupational Safety and Health Administration (OSHA) issued [temporary enforcement guidance](#) to its Regional Administrators and State Plan Designees for responding to COVID-19 related complaints, referrals and illness reports. The issuance of this guidance presents a timely reminder to employers that COVID-19 can be a recordable illness under OSHA recordkeeping requirements mandating that covered employers report work-related

injuries and illnesses on an OSHA 300 log.

Covered employers are responsible for recording any COVID-19 case where:

1. The case is a confirmed COVID-19 case; AND
2. The case is work-related under 29 CFR 1904.5, which presumes work-relatedness for illnesses resulting from exposures in the work environment; AND
 1. Results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness; OR
 2. Involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in any of the events in (a) above. The case involves one or more of the criteria in 29 CFR 1904.7:

Under [separate enforcement guidance](#), OSHA has acknowledged that where there is ongoing community spread, it would be difficult for most employers to determine “work-relatedness.” Accordingly, most employers are not required to make that determination except where there is objective evidence that a case may be work-related (for example, a cluster of cases among workers who work in close proximity) and that evidence was “reasonably available to the employer.” Healthcare, emergency response and correctional institutions must continue to make determinations on work-relatedness.

Some very small employers (fewer than 10 employees), as well as employers in [certain industries](#) are exempt or partially-exempt from OSHA’s recordkeeping requirements.

The recent enforcement guidance indicates that OSHA will be giving risks posed by COVID-19 “heightened attention,” and sets forth flexible procedures for OSHA field offices “to maximize OSHA’s impact in securing safe workplaces for workers in this evolving environment.”

[Other OSHA requirements](#) that may be applicable to potential COVID-19 exposure include OSHA’s personal protective equipment (PPE) and sanitation standards, as well as the “[General Duty Clause](#)” of the Occupational and Safety and Health Act of 1970, which requires employers to furnish “employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”

Saxton & Stump attorney [Rick Hackman](#) is available to further discuss the temporary enforcement guidance and how our [Labor and Employment](#) group can provide support for businesses when responding to COVID-19 related complaints.

Related People

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Related Services and Industries

[Labor and Employment](#)