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OSHA Recording and Reporting of Cases of COVID-19

Bradford Hammock

Littler

As the number of COVID-19 cases continues to increase within the United States, many employers are now asking whether they must record cases of COVID-19 on their Occupational Safety and Health Administration (OSHA) 300 Logs or report the cases to OSHA. OSHA requires certain employers to record work-related injuries and illnesses that meet certain severity criteria on the OSHA 300 Log, as well as complete the OSHA Form 301 (or equivalent) upon the occurrence of these injuries. For purposes of COVID-19, OSHA also requires employers to report to OSHA any work-related illness that (1) results in a fatality, or (2) results in the in-patient hospitalization of one or more employees. "In-patient" hospitalization is defined as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

Is COVID-19 Considered an "Illness" under OSHA's Recordkeeping Rules?

OSHA's recordkeeping rules apply only to injuries or "illnesses." The rule defines an injury or illness as "an abnormal condition or disorder." Illnesses include "both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning." Despite this broad definition,

OSHA has essentially excluded from coverage cases of the common cold or the seasonal flu. OSHA has made a determination that COVID-19 should *not* be excluded from coverage of the rule – like the common cold or the seasonal flu – and, thus, OSHA is considering it an "illness." However, OSHA has stated that only confirmed cases of COVID-19 should be considered an illness under the rule. Therefore, if an employee simply comes to work with symptoms consistent with COVID-19 (but not a confirmed diagnosis), the recordability analysis would not necessarily be triggered at that time.

When is a COVID-19 Case Considered Recordable?

If an employee has a confirmed case of COVID-19, the employer would need to assess whether the case was "work-related" under the rule and, if so, whether it met the rule's additional recordability criteria (*i.e.*, resulted in a fatality, days away from work, restricted duty, or medical treatment beyond first aid). Given current protocols for treating COVD-19, it is likely that for any case that is confirmed, the additional severity criteria will be met, as affected persons are instructed to self-quarantine and stay home. The primary issue for employers therefore becomes whether a particular case is "work-related."

A particular illness is work-related under the rule 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-relatedness is presumed for illnesses that result from events or exposures in the work environment, unless certain exceptions apply. One of those exceptions is that the illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs *outside* of the work environment. Thus, if an employee develops COVID-19 *solely* from an exposure outside of the work environment, it would *not* be work-related, and thus not recordable.

The employer's assessment should consider the work environment itself, the type of work performed, risk of person-to-person transmission given the work environment, and other factors such as community spread. Healthcare work environments, where job activities are more likely to result in person-to-person exposure, would present a more likely scenario of work-relatedness than non-healthcare settings. Because each work environment is different, employers must conduct an individualized assessment when a confirmed case of COVID-19 presents.

When is a COVID-19 Case Reportable?

As with the recordability analysis above, if an employee has a confirmed case of COVID-19 that is considered work-related, an employer would need to report the case to OSHA if it results in a fatality or in-patient hospitalization of one or more employees. It is important to note, however, that the reporting obligation is time-limited. Thus, if a fatality due to COVID-19 occurs after 30 days from the workplace incident leading to the illness, an employer is not required to report it. Similarly, if the in-patient hospitalization occurs after 24 hours from the workplace incident leading to the illness, an employer is not required to report. Given the nature of COVID-19 and the disease progression, this may result in fewer reports to OSHA despite expected hospitalization of cases going forward.

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