

PUBLICATION

Is a COVID-19 Infection Recordable or Reportable to OSHA? It Depends.

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Every day, if not every hour, new questions arise regarding the impact of the COVID-19 pandemic on our nation. A critical area of concern is the safety of our workforce. While the learning curve is steep, the Occupational Safety and Health Administration (OSHA) has been regularly issuing guidance on best practices to keep ourselves and our employees safe. You can read about OSHA's guidance on preparing workplaces for COVID-19 in our previous alert.

On Friday, April 10, 2020, OSHA issued Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19), answering certain questions about whether employers need to be recording confirmed COVID-19 infections on Form 300 under 29 CFR Part 1904. Essentially, OSHA divides employers into two categories: (1) employers in the health care industry, emergency response organizations, such as ambulance services, firefighters and law enforcement, and correctional institutions; and (2) all other employers.

Employers in the first category, who generally have a higher exposure risk, must continue to make work-relatedness determinations pursuant to 29 CFR § 1904 regarding whether a COVID-19 infection is recordable. However, until further notice, OSHA will not require other employers to make the same work-relatedness determinations. There are two exceptions to this relaxed enforcement of 29 CFR § 1904 for employers with employees who have a low exposure risk¹:

1. **There is objective evidence that a COVID-19 infection may be work-related.** This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and
2. **Such evidence was reasonably available to the employer.** Examples of reasonably available evidence include information given to the employer by employees, as well as information that an employer learns regarding its employees' health and safety in the ordinary course of managing its business and employees.

OSHA explains that the purpose of this enforcement policy is to allow employers to focus their efforts on preparing their workplaces and implementing procedures to reduce the risk of exposure for employees.

While the recent guidance on recording cases of coronavirus does not speak to whether a COVID-19 infection is reportable to OSHA, the same criteria for determining whether an employer has a reporting requirement still apply. As OSHA indicated in its Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19), issued on April 13, 2020, a work-place illness or accident requires reporting to OSHA if it results in a fatality, an in-patient hospitalization, an amputation, or loss of an eye. A fatality must be reported within eight hours and an in-patient hospitalization an amputation, or loss of an eye must be reported within 24 hours. If an employer is not immediately aware of a reportable fatality, in-patient hospitalization, amputation, or loss of an eye, the report to OSHA must be made within the above time periods after the employer learns of it. Employers must report a fatality if it occurs within 30 days of the work-related incident. OSHA has not yet provided guidance on how the term incident will be evaluated in the context of potential workplace exposure to a virus.

Should you have questions regarding whether a particular COVID-19 infection is recordable or requires reporting to OSHA, please feel free to contact [Ashley Strittmatter](#) for assistance. For more information and general guidance on how to address other legal issues related to COVID-19, please visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.

¹ For additional guidance regarding OSHA's classification of employee exposure levels and corresponding protective measures needed, see the summary chart Baker Donelson has prepared [here](#).