

## OSHA Update: Recording Cases of COVID-19

### Related Practices

COVID-19 Task Force

By Peabody & Arnold on April 28, 2020

**\*\*Since the date of this posting, OSHA has issued updated guidance rescinding its April 10, 2020 guidance. Please refer to our [more recent post](#), dated May 29, 2020, for current guidance.\*\***

The Occupational Safety and Health Act (OSH Act) requires most employers with 10 or more employees to record and, in some instances, report serious work-related injuries and illnesses. As previously discussed in our March 23, 2020 [Update for Employers on COVID-19](#), the Occupational Safety and Health Administration (OSHA) advised employers that confirmed, work-related cases of COVID-19 must be recorded if they involve one or more of the circumstances that trigger(s) the employer's obligation to record occupational illnesses under the statute.

In areas where there is widespread community transmission, however, it can be a challenge to determine whether a confirmed case of COVID-19 is work-related and/or recordable. As a result, on April 10, 2020, OSHA issued [guidance](#) to specifically address this challenge that many employers are facing in areas where there is widespread transmission of COVID-19. According to its guidance, OSHA will not be enforcing the requirement to make the typical work-relatedness determinations against employers in most industries, except in certain circumstances.

This post provides only a summary of the information from OSHA's updated guidance on recordkeeping and is not a substitute for legal advice.

### ***Recording Obligations for Work-Related Cases of COVID-19***

According to OSHA's guidance, COVID-19 is a recordable illness if it meets other existing recordkeeping requirements for employers. Thus, employers are responsible for recording cases of COVID-19 if:

- The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention (CDC);<sup>[1]</sup>
- The case is "work-related," which is defined as an event or exposure *in the work environment* that either *caused or contributed to* the resulting condition or significantly aggravated a pre-existing injury or illness; **and**
- The case involves one or more of the general recording criteria under the OSH Act, such as resulting in days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or death.<sup>[2]</sup>

### ***OSHA's Temporary, Revised Enforcement Policy***

Although COVID-19 is a recordable occupational illness, OSHA acknowledges that in areas where there is ongoing community transmission of COVID-19 it may be difficult for many employers, other than those in certain industries, to conduct inquiries into the work-relatedness of a confirmed case of COVID-19. As a

result, OSHA is using its discretion to relax its enforcement policy for recording requirements of employers outside of the healthcare industry, emergency response organizations, or correctional institutions. While employers within such industries must continue to make work-relatedness determinations under existing standards, OSHA's guidance states that it will not hold other employers to the same recording standards until further notice, except where:

- There is objective evidence that a COVID-19 case may be work-related, which may include instances where there are a number of cases developing among workers who work closely together without an alternative explanation; *and*
- The evidence was reasonably available to the employer, which may include information that was given to an employer by employees and information the employer learns regarding the health and safety of their employees in the ordinary course of managing its business and employees.

OSHA's stated purpose in offering this guidance and relaxing its enforcement policy is to encourage employers to focus on implementing good hygiene practices in their workplaces, and to otherwise mitigate COVID-19's effects, rather than to focus on making difficult work-relatedness decisions in geographic areas where there is community transmission.

#### **FURTHER INFORMATION**

We will continue to monitor updates and publications from OSHA on requirements for employers and issues related to workplace health and safety. Employers are encouraged to consult with a member of Peabody & Arnold's COVID-19 Task Force for further information about the COVID-19 pandemic and its impact on employment laws.

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[1] A confirmed case of COVID-19 refers to individuals who have at least one respiratory specimen that tested positive for SARS-CoV-2, which is the name of the virus that causes COVID-19. For more information about confirmed cases, please visit [the CDC's website](#).

[2] 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 meet one of the aforementioned criteria. See 29 C.F.R. § 1904.7.