

# OSHA Revises Guidance For Recording Work-Related COVID-19 Cases

## Related Professionals

David E. Dubberly  
803.253.8281  
ddubberly@nexsenpruet.com

## Practices

Employment & Labor Law

05.22.2020

Under new OSHA guidance that goes into effect on May 26, 2020, employers covered by OSHA's recordkeeping requirements must determine if an employee who contracts COVID-19 was infected while at work. According to the new guidance, a COVID-19 case is a recordable illness if these criteria are met:

1. The case is a confirmed case of COVID-19;
2. The case is work-related; and
3. The case results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

The key issue in a COVID-19 case is work-relatedness. OSHA's new guidance indicates it will consider the following factors in determining whether an employer has made a reasonable determination on this issue:

- The reasonableness of the employer's investigation into work-relatedness. According to OSHA, it would be reasonable for an employer, upon learning of an employee's COVID-19 illness, to ask the employee how he or she believes he contracted the virus, to discuss with the employee activities at work and outside of work that may have led to the illness, and to review the employee's work environment for potential exposure.
- The evidence available to the employer at the time it made the decision about work-relatedness and whether it later learned additional information.
- The evidence that a COVID-19 illness was contracted at work.
  - Evidence that may weigh in favor of work-relatedness includes (i) several cases developing among workers who work closely together and there is not an alternative explanation; and (ii) an employee testing positive shortly after lengthy, close exposure to a customer or coworker who has a confirmed case and there is not an alternative explanation.

- Evidence that may weigh against work-relatedness includes (i) a worker who tests positive is the only worker in his or her vicinity to contract the virus and his or her job duties do not involve frequent contact with the public; and (ii) a worker who contracts COVID-19 has close contact with a family member or close friend who is not a coworker who has the virus.

Employers with 11 or more employees in most industries are covered by OSHA's recordkeeping requirements. These employers must list each recordable workplace illness on the OSHA 300 log. A COVID-19 case should be coded as a respiratory illness. With the new guidance, covered employers will be expected to investigate COVID-19 cases and make a determination of work-relatedness.

---

*Our insights are published as a service to clients and friends. They are intended to be informational and do not constitute legal advice regarding any specific situation.*