

DETERMINING WHETHER A COVID-19 CASE IS WORK RELATED

The coronavirus (COVID-19) pandemic has created massive change and concern for employers and employees across the world. Even as businesses reopen and employees return to their new normal, the risk of becoming exposed to and ill with COVID19 is still present. When an employee reports they have COVID-19, employers are faced with the difficult task of determining whether the employee's illness is work-related.

OSHA Requirements

The Occupational Safety and Health Act (the Act) requires employers to report and record workrelated injuries and illnesses. OSHA has indicated that COVID-19 infections are recordable injuries if they are work-related and they meet the Act's recording criteria. Recording requirements apply only to employers with more than 10 employees who are not in an exempt, low-risk industry. In addition, employers must report incidents that result in an employee's fatality within eight hours. Incidents that result in inpatient hospitalization, amputation or loss of an eye must be reported within 24 hours.

OSHA Guidance on Work-relatedness

An injury or illness is work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a preexisting injury or illness. Workrelatedness is presumed for events or exposures in the work environment.

Case-by-Case Evaluation

Unfortunately, because the coronavirus is so widespread, determining whether an employee's illness is work-related can be difficult and should be evaluated on a case-by case basis. Employers can conduct the following activities when an employee reports a positive COVID-19 diagnosis:

- Ask how the employee believes they were exposed to the coronavirus
- Ask employees about their work-related activities.
- Ask employees about their out-of-work activities, while being sure to respect their privacy.
- Conduct a review of the employee's work environment to identify potential COVID-19 exposure.
- Review whether the employee's co-workers have reported a COVID-19 diagnosis or symptoms.

After conducting a review, employers will hopefully have enough information to determine whether a COVID-19 case is work-related. Employers should consider that certain situations, including the following, make it more likely for a COVID-19 case to be work-related:

- The employee is frequently and regularly exposed to the public.
- There are other employees who have tested positive for COVID-19.
- The employee works closely or has regular contact with someone who has tested positive for COVID-19.

Employers should consult legal counsel when evaluating whether an employee's COVID-19 case is work-related to ensure compliance with all applicable federal, state and local laws.

Recording a Work-related COVID-19 Case

OSHA has clarified that COVID-19 can be a recordable illness if a worker is infected as a result of performing their workrelated duties. However, employers are only responsible for recording cases of COVID-19 if all of the following are met:

- The case is a confirmed case of COVID-19 (see Centers for Disease Control and Prevention (CDC) information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);
- The case is work-related, as defined by 29 CFR 1904.5; and
- The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g., medical treatment beyond first aid or days away from work).

OSHA's definition of a recordable illness includes "both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder or poisoning." This definition is limited to abnormal conditions or disorders that exclude the common cold and the seasonal flu. This can make it difficult when employees show up to work with coronavirus-like symptoms, such as a high fever or coughing. For this reason, employers may hold off until they have a confirmed COVID-19 diagnosis before starting a recordability analysis. A confirmed case of COVID-19 means an individual with at least one respiratory specimen that tested positive for SARS-CoV-2, the virus that causes COVID-19.

Reporting a Work-related COVID-19 Case

COVID-19 cases must be reported if they are work-related and result in a fatality (within eight hours), inpatient hospitalization, amputation or loss of an eye (within 24 hours). The reporting periods begin as soon as the employer learns about the work-related incident, even if there is a delay between the time the incident takes place and the time the incident is reported to the employer.

Source - Zywave, Inc.