

OSHA Update

*Form 300/A Reporting

In terms of recording of COVID-19 cases on an employer's OSHA 300/301 logs, OSHA said in April that outside of the healthcare/deathcare/EMR and corrections sectors, "community transmission" would be presumed and employers would not need to log such cases. Again, OSHA reversed course in May, and now says that employers **must** record COVID illnesses if there is "objective evidence that a COVID-19 case **maybe** work-related and the evidence was reasonably available to the employer." The employer must exercise due diligence in investigating reports of cases, including contact tracing. Of course, if an employer has a severe illness (or injury) report, they must still notify OSHA within 8 hours (fatality) or 24 hours (hospitalization, amputation, eye loss) and this includes deaths or hospitalizations from work-related COVID-19 illness. Please note that CalOSHA has more stringent reporting requirements and also now has a presumption of work-relatedness for most COVID-19 cases in terms of reporting/recording (See Below).

*Cal/OSHA Recording and Reporting Requirements for COVID-19 Cases

California employers that are required to record work-related fatalities, injuries and illnesses must record a work-related COVID-19 fatality or illness like any other occupational illness

How does an employer determine if a COVID-19 case is work-related for recordkeeping purposes?

For recordkeeping purposes, an injury or illness is considered work-related 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.

A work-related exposure in the work environment would include interaction with people known to be infected with SARS-CoV-2 (the virus that causes COVID-19); working in the same area where people known to have been carrying SARS-CoV-2 had been; or sharing tools, materials or vehicles with persons known to have been carrying SARS-CoV-2. Given the disease's incubation period of 3 to 14 days, exposures will usually be determined after the fact.

If there is not a known exposure that would trigger the presumption of work-relatedness, the employer must evaluate the employee's work duties and environment to determine the likelihood that the employee was exposed during the course of their employment. Employers should consider factors such as:

- The type, extent and duration of contact the employee had at the work environment with other people, particularly the general public.
- Physical distancing and other controls that impact the likelihood of work-related exposure.
- Whether the employee had work-related contact with anyone who exhibited signs and symptoms of COVID-19.