



OSHA obligations for hospitals with COVID-19 positive employees

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Good news for employers! The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has clarified its reporting guidance as it relates to COVID-19.

Since COVID-19 reared its ugly head in early 2020, employers – especially those in the health care industry – have had the difficult task of determining whether the COVID-19 related hospitalizations and fatalities of their employees are “work-related” for purposes of reporting to OSHA. Under [29 C.F.R. § 1904.39\(b\)\(6\)](#) employers are required to:

- Report a hospitalization if it occurs within 24 hours of the work-related incident; or
- Report a fatality if it occurs within 30 hours of the work-related incident.

However, this left many health care employers asking, what is the work-related “incident” that triggers these reporting periods? Is it the employee's exposure to COVID-19 at the workplace? As a hospital, how do you figure that out? Or, is it the positive COVID-19 diagnosis? If so, due to the latency period, how do you know it occurred at work?

When to report COVID-19 cases

Under OSHA's [clarified rules](#), the term “incident” has been defined as “an exposure to SARS-CoV-2 [COVID-19] at work.”

- For reportable in-patient hospitalizations, the employer must report the hospitalization within 24 hours of knowing both of the following:
 - The employee has been in-patient hospitalized; and
 - The reason for the hospitalization was a work-related case of COVID-19.
- For reportable fatalities, the employer must report the fatality within eight hours of knowing both of the following:
 - The employee has died; and
 - The cause of death was a work-related case of COVID-19.

While this clarification adds an additional prong to the work-related analysis, it will likely result in fewer reportable incidents for employers because it is extremely rare for an individual to be admitted for treatment within 24 hours of being exposed to COVID-19. However, due to the look-back period, reporting of fatalities is likely to increase.

It is important to note that the clarification above applies only to the requirement to report injuries and illnesses, not an employer's requirement to record such.

When to record COVID-19 cases

Until further notice, COVID-19 is a recordable illness under OSHA's recordkeeping requirements. Employers are required to record cases of COVID-19 on their OSHA 300 log, if:

- The case is confirmed, as defined by the Centers for Disease Control and Prevention;
- The case is work-related as defined by 29 C.F.R. § 1904.5; and
- The case involves one or more of the general recording criteria under 29 C.F.R. § 1904.7

Determining whether a COVID-19 case should be considered by the employer as work-related can be difficult, especially for hospitals. Factors to consider when making this determination are:

- The employee's risk level;
- If the employee exposed to COVID-19 at work; or
- What else the employee was doing prior to symptoms emerging.

If a determination cannot be made regarding work-relatedness, OSHA requires that the COVID-19 case is presumed to be work-related if an event or exposure in the workplace is a discernable cause of the illness. Accordingly, if the above factors allow the employer to determine that the workplace was not a discernable cause of the illness, it does not have to be recorded on the OSHA 300 log. However, if exposure at work cannot be ruled out, the COVID-19 case should be recorded.

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