

HBI SAFETY & HEALTH MANAGEMENT PLANS

OSHA Recordkeeping Requirements and COVID-19

As the COVID-19 outbreak continues to spread in the US, many employers have questions about OSHA illness recordability and reportability. OSHA recordkeeping requirements can be complex when it comes to communicable diseases when certain illnesses are covered while others are not. Typically diseases which spread in the community under normal conditions (common cold, stomach virus) are excluded from record keeping requirements. Diseases which employees contract through work practices or work site proximity to infectious materials or persons (tuberculosis, plague) are covered under the reporting requirements.

COVID-19 is currently being spread via person to person community transmission like a common cold but certain classes of employees may be exposed as a direct result of work practices or locations. The nebulous circumstances around infections that may have occurred in the community or in the workplace makes the recordkeeping task difficult. However, upon deeper reading of the OSHA 1904 Subpart C, only illnesses which can be attributed to work related exposures or events are recordable.

Determining if a COVID-19 infection is work related requires the employer to identify the most likely cause or source of the infection and if that infection occurred in the workplace during business operations. In cases where making a recordability determination is difficult it is advisable to consider what type of work the employee is engaged in and how that work could increase the likelihood of infection. OSHA offers a guide on identifying worker risk categories for this very purpose:

- High risk employees are:
 - o Engaged in healthcare and healthcare laboratory activities
 - o Ancillary support services for medical practitioners
 - o Transporting the infirmed and entering patient hospital rooms
- Medium risk employees are:
 - o Workers whose job functions may place them within six feet of potentially infected individuals, these workers typically perform services with or for the community such as teachers, store clerks, and transportation employees
- Low risk employees are:
 - o Engage in work that does not require close or frequent contact with other individuals such as office workers, construction tradesmen, and factory workers

Using these risk classifications, an employer can rate the likelihood of employee work related exposures. For example, a nurse in an ER who contracts COVID-19 likely contracted the disease at work if he or she was involved in the patient intake, triage, or care of infected individuals. Conversely, a customer service representative that mostly interacts with clients via computer or telephone who becomes infected would most likely have been infected through community spread unrelated to their job task. In the case of the nurse, the infection would be work related and recordable; while the customer service representative's case would not be work related or recordable under most circumstances.

It is also important to note that the OSHA General Duty Clause, mandating a workplace free of recognized hazards, may play a role in determining if a case is work related. The General Duty Clause is noted in OSHA's COVID-19 materials as a means to require employers to protect employees from infection exposures including those which could be the result of community spread within the workplace. Should a work related exposure be determined to be the result of a General Duty

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Clause violation, i.e. failing to sanitize work areas, or send sick employees home, etc., the infection would be recordable.

Navigating recordable cases and the 300 Log will be difficult for the 2020 reporting year. Employers should carefully evaluate each reported employee COVID-19 case and determine if the exposure was likely to be caused by work tasks or the work environment. It's not too late for employers to enact response plans and controls to limit potential workplace exposures for all risk categories of employees.