

OSHA INJURY AND ILLNESS RECORDKEEPING and REPORTING related to **COVID-19**



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OSHA INJURY AND ILLNESS RECORDKEEPING AND REPORTING RELATED TO COVID-19

INTRODUCTION

The COVID-19 pandemic has changed the way we do business in this country. Many employees are now working from home permanently, while workers who are in construction or manufacturing may still be practicing social distancing on the job. Hospitality workers and others who have contact with the public must take extra precautions to protect themselves from exposures to the virus that causes COVID-19. In addition, OSHA issued Emergency Temporary Standards for COVID-19 specific to healthcare workers. With these changes come questions about how to record work-related cases of COVID-19 and whether to report to OSHA deaths or hospitalizations related to the illness. This whitepaper examines what OSHA has to say about the recordability of COVID-19 in the workplace along with the agency's injury and illness recordkeeping and reporting regulations in 29 CFR Part 1904.

WHAT MAKES AN INJURY OR ILLNESS RECORDABLE?

An injury or illness is recordable on your OSHA 300 Log if it meets all three of the following conditions:

1. It is work-related according to OSHA's definition in 29 CFR 1904.5;
2. It is new according to OSHA's definition in 29 CFR 1904.6; and
3. It meets one or more of the general recording criteria listed in 29 CFR 1904.7.

COVID-19 IS A RECORDABLE ILLNESS

A case of COVID-19 is recordable on your Log when it meets the three conditions above, and it is also a confirmed case of COVID-19.

A case of COVID-19 can be confirmed by a laboratory test, a diagnosis by a medical professional, or by other means recommended by the Centers for Disease Control and Prevention (CDC).

WORK-RELATEDNESS (29 CFR 1904.5)

WHAT IS OSHA'S DEFINITION OF "WORK-RELATED"?

Cases of COVID-19 are only recordable if they are work-related. OSHA says that a case 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. Basically, if an injury or illness happened at work, or while the employee was doing work for the employer, the case is considered work-related.

ARE THERE ANY EXCEPTIONS TO THAT DEFINITION?

Yes. There are nine exceptions to work-relatedness found in the regulations at 1904.5(b)(2). These apply when:

1. At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee.



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Is it a **COMMON COLD** or something more **SERIOUS?**



2. The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.
3. The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.
4. The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer's premises or brought in). For example, if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work-related. Note: If the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related.
5. The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours.
6. The injury or illness is solely the result of personal grooming, self medication for a non-work-related condition, or is intentionally self-inflicted.
7. The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.
8. The illness is the common cold or flu (Note: contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work).

9. The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed healthcare professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.

WHEN ARE CASES OF COVID-19 WORK-RELATED?

You'll notice that cases of the common cold or flu, even when acquired in the workplace, are not considered to be work-related because OSHA specifically exempts them. However, other diseases, such as COVID-19, are work-related if they were contracted in the work environment.

HOW DO YOU DETERMINE IF THE SICK EMPLOYEE CAUGHT THE VIRUS IN THE WORKPLACE?

OSHA says you need to determine if an exposure to the novel coronavirus in the workplace was a “discernible cause,” that led to the employee’s illness. In some cases, it may be fairly easy to make this determination. Healthcare workers, for example, may be regularly exposed to people carrying the virus. In other cases, you may have an employee exposed to a coworker who tested positive for COVID-19. If the employee later becomes sick with COVID-19, that’s a discernible cause.

In the preamble discussion to Part 1904, OSHA says that when you’re not sure the employee’s injury or illness is work-related, you must evaluate the employee’s work duties and the work environment to decide whether it is more likely than not that events or exposures in the work environment either caused or contributed to the condition. If so, the case is work-related.

Where the spread of the coronavirus is occurring in the community, it can be hard for employers to tell if sick employees were exposed to it in the workplace or elsewhere. For non-healthcare employers, OSHA provides the following guidance for determining if cases of COVID-19 are work-related:





1. Ask the employee how he believes he contracted COVID-19;
2. Discuss with the employee her work and out-of-work activities that may have led to the illness; and
3. Review the employee's work environment for potential exposures to the virus.

ARE INJURIES AND ILLNESSES THAT OCCUR TO EMPLOYEES WORKING FROM HOME WORK-RELATED?

With so many workers teleworking for the first time, it's important to know how to record (or not) any injuries or illnesses that occur. OSHA says that injuries and illnesses that occur to home workers are only recordable if both of the following conditions are true:

1. The employee was working for pay or compensation at the time of the injury or illness; and
2. The injury or illness is directly related to the employee's work.

For example, if an employee cuts herself opening a box of work materials, that would be work-related. On the other hand, if the employee tripped over a rock in her driveway and cut her knee while carrying that same box, that would not be work-related. (The rock is not related to work.)



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NEW CASES (29 CFR 1904.6)

A “new” case, according to OSHA’s definition, is one that has not occurred before or that has occurred before, but the employee had recovered completely before an event or exposure in the workplace caused the signs and symptoms to reappear.

Work-related cases of COVID-19 would be new cases on your Log. But if a sick employee who had been self-treating at home later needed to go to the hospital for medical treatment, or in the worst-case scenario, died, you would need to update your Log with the new information. You would not consider it to be a new case.

GENERAL RECORDKEEPING CRITERIA (29 CFR 1904.7)

WHAT ARE THE GENERAL RECORDKEEPING CRITERIA?

The general recordkeeping criteria are listed in order of seriousness in §1904.7 and include:

- Death,
- Days away from work,
- Restricted work activity or job transfer,
- Medical treatment beyond first aid,
- Loss of consciousness, and
- Significant injury diagnosed by a physician or other licensed health care professional.

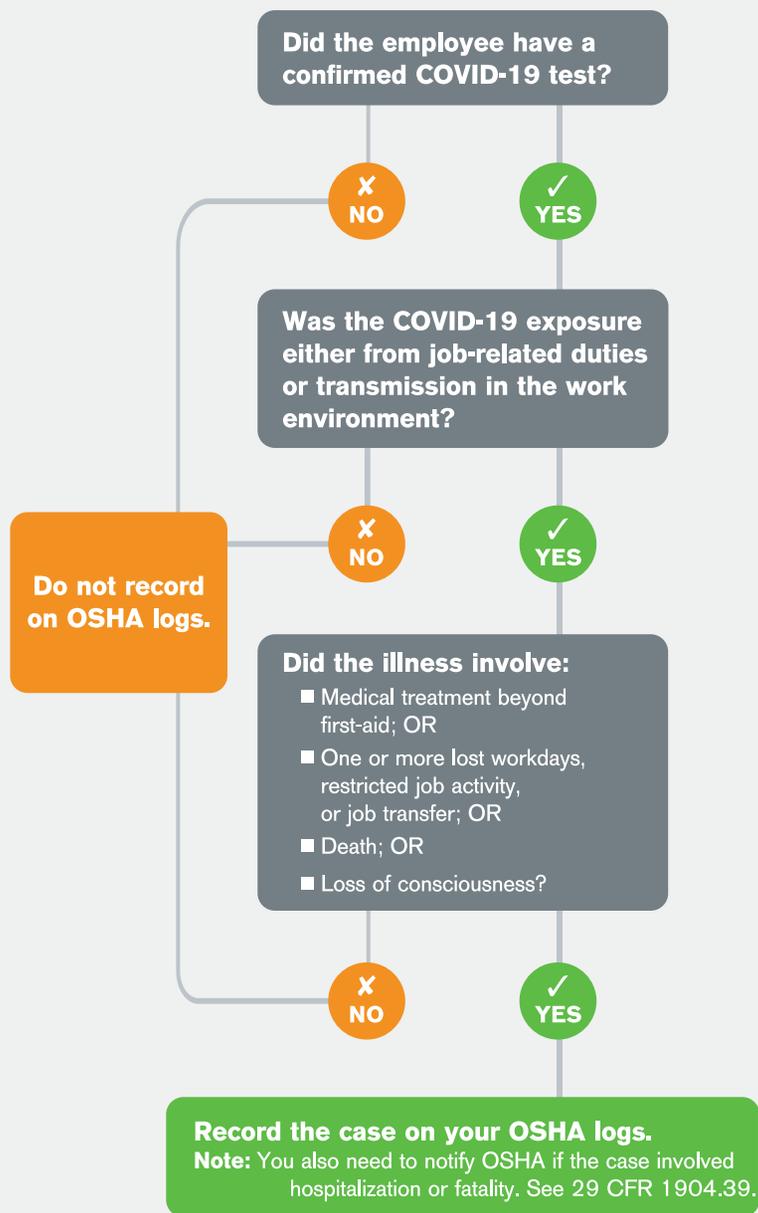
Unfortunately, many cases of COVID-19 are resulting in death. Almost all cases of the disease will result in days away from work, even if the employee feels well enough to work. That’s because employees who are exhibiting symptoms of the disease should self-quarantine for at least 14 days.



GENERAL RECORDKEEPING CRITERIA

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COVID-19 Recordability Decision Tree



Healthcare workers

If a healthcare worker treats a COVID-19-positive patient and subsequently tests positive, it is likely work-related.

Non-healthcare workers

If a non-healthcare worker comes into contact* with a confirmed positive coworker in the work-environment, or member of the public during job duties, and subsequently tests positive, it would likely be work-related, unless there are other identifiable non-work exposures (such as rampant community spread).

*Health departments can help perform case tracing.

WHAT DOES OSHA SAY ABOUT AN EMPLOYEE WHO CAN DO HIS OR HER WORK FROM HOME, BUT NORMALLY DOES NOT WORK AT HOME?

The agency says you should count this as a day away from work. See OSHA's FAQ #29:

Q: One of my employees broke his foot and is working from home. Should his time home be considered as days away from work or restricted work activity?

A: The time should be counted as days-away-from-work if the employee normally works at your establishment.

Q: Are adverse reactions to the COVID-19 vaccine recordable?

A: No. OSHA says it is working diligently to encourage COVID-19 vaccinations. The agency does not wish to have any appearance of discouraging workers from receiving COVID-19 vaccinations, and also does not wish to disincentivize employers' vaccination efforts. Therefore, OSHA will not enforce any recording requirements to record worker side effects from COVID-19 vaccination through May 2022.

Source: OSHA e-correspondence

REPORTING FATALITIES AND HOSPITALIZATIONS TO OSHA

OSHA's regulations at 29 CFR 1904.39 require all employers, even those who do not keep an injury or illness Log, to report directly to OSHA any work-related fatalities, hospitalizations, amputations, or the loss of an eye. Reports must be made either in person, by telephone to the nearest OSHA State-Plan State office, or by using an online reporting form on OSHA's website.

Reports must be made within 8 hours of the work-related fatality, or within 8 hours of the employer learning about it or learning the fatality was work-related.

Reports must be made within 24 hours for work-related hospitalizations, amputations, or the loss of an eye.

IF AN EMPLOYEE DIES BECAUSE OF A WORK-RELATED EXPOSURE TO COVID-19, IS THIS REPORTABLE TO OSHA?

Yes. If the employee died because of a work-related case of COVID-19, the death must be reported to OSHA within 8 hours.

WHAT IF THE EMPLOYEE DIES MORE THAN 30 DAYS AFTER BEING DIAGNOSED WITH COVID-19?

If the employee dies more than 30 days after contracting COVID-19, you would not have to report the death to OSHA.

IF AN EMPLOYEE IS HOSPITALIZED BECAUSE OF A WORK-RELATED EXPOSURE TO COVID-19, IS THIS REPORTABLE TO OSHA?

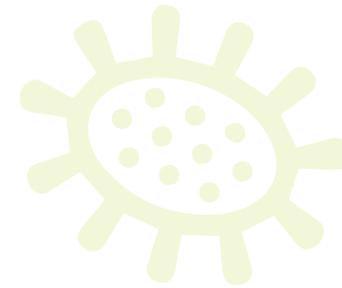
Yes. If the employee is formally admitted to the hospital for in-patient care or treatment because of a work-related, diagnosed case of COVID-19, you must report it to OSHA.

WHAT IF THE EMPLOYEE'S HOSPITALIZATION FOR COVID-19 COMES MORE THAN 24 HOURS AFTER THE EMPLOYEE IS EXPOSED TO THE DISEASE IN THE WORKPLACE?

You only need to report hospitalizations to OSHA that occur up to 24 hours after the workplace incident or exposure.

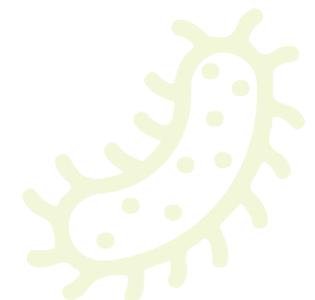
STATE DIFFERENCES

Keep in mind that a few states, such as California, Minnesota, and Kentucky, have additional or more stringent reporting requirements than federal OSHA. Be sure you know the particular reporting requirements in the states where you operate.



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CONCLUSION

The COVID-19 epidemic has created unprecedented challenges for employers and workers, especially for determining the work-relatedness of cases of COVID-19 for non-healthcare employers. Employers need to understand that work-related cases of COVID-19 are recordable if they have been confirmed by a laboratory test and result in days away from work or medical treatment beyond first aid. Finally, you need to be aware of your reporting requirements if an employee dies or is hospitalized from a work-related exposure to the virus.



DID YOU KNOW THAT DIFFERENT STATES CAN HAVE DIFFERENT RULES?

You must know the reporting requirements in the state(s) where you operate

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ABOUT THE AUTHOR

LISA NEUBERGER, J. J. KELLER & ASSOCIATES, INC.

Lisa joined J. J. Keller & Associates, Inc. in 2008. She serves as a resource for customers on environmental, health, and safety topics, and has a passion for the safe management of hazardous waste. She specializes in OSHA's workplace injury and illness recordkeeping and reporting, flammable liquids, and sanitation standards and in EPA's solid and hazardous waste regulations.



Lisa is the lead editor for the OSHA Compliance for California Manual, which provides a detailed overview of the state's safety and health rules and regulations, including IIPP, workplace violence, and Proposition 65. She is also responsible for the Environmental Compliance for the Workplace manual and the Environmental Regulatory Alert newsletter. Both publications keep EHS professionals up to date on environmental regulatory policies and important news. Lisa is a frequent speaker at workplace safety seminars and conferences, including the National Safety Council's Congress and Expo.



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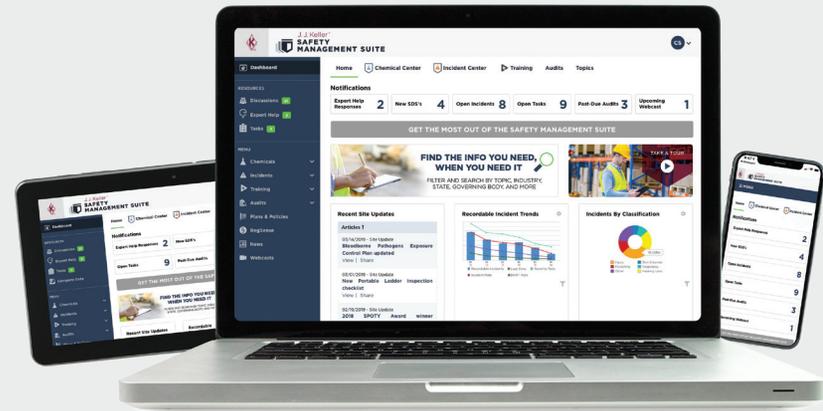
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