

Client Alert: OSHA Issues Guidance for Reporting Cases of Coronavirus (COVID-19) in the Workplace

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Please Read: As of May 26, 2020, OSHA's revised enforcement guidance is in effect and the below information may be outdated. Please see Mr. Kelleher's detailed analysis of what has changed in the new guidance [here](#).

The Occupational Safety and Health Administration recently confirmed that COVID-19 in the workplace is a recordable illness and must be reported to the government in accordance with OSHA's general regulatory requirements governing injuries and illness in the workplace. OSHA also published interim enforcement guidance to assist employers in meeting the reporting requirements for COVID-19 cases. [\[1\]](#)

OSHA's guidance is especially important and timely. Most employers in the United States are exempt from OSHA's general reporting requirements and may be unfamiliar with what needs to be reported and when. In addition, many employers will face difficulty determining when a COVID-19 case is work-related, particularly in areas of community spread.

In an effort to clarify the employer's responsibility, OSHA announced five factors that trigger the reporting requirement for a COVID-19 case:

1 The case is confirmed as COVID-19, as defined by the Center for Disease Control and Prevention, i.e., at least one respiratory specimen tested positive for SARS-CoV-2.

2 The case is work-related, as defined by 29 CFR 1904.5. Generally, an illness is work-related if an exposure in the work environment caused or contributed to the condition, but OSHA recognizes many employers may have difficulty making this determination for cases of COVID-19 in areas of community transmission.

Therefore, OSHA has partially suspended enforcement of this requirement. Until further notice, employers except for employers in the health care industry, emergency response organizations and correctional institutions which must continue to make workplace-relatedness determinations are required to make a work-related determination only where:

There is objective evidence that a COVID-19 case may be work-related, such as when a number of cases develop among workers who work closely together without an alternative explanation; and

The objective evidence is reasonably available to the employer, including information given to the employer by employees, as well as information that an employer learns regarding its employees' health and safety in the ordinary course of managing its business and employees.

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The case involves one or more of the general reporting criteria in Section 1904.7 (the criteria for most employers is a fatality, in-patient hospitalization, amputation or loss of an eye.)^[2]

OSHA hopes that publication of this enforcement policy helps employers focus their efforts on implementing recommended hygiene practices and other COVID-19 mitigation efforts in the workplace, rather than on making difficult reporting and work-relatedness decisions.

^[1] OSHA's guidance on the reporting requirements for COVID-19 is entitled *Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19)* and can be found [here](#) or at [osha.gov](https://www.osha.gov).

^[2] 29 CFR 1904.1 and 1904.2.

This summary is not intended to contain legal advice or to be an exhaustive review. If you have any questions regarding this article, please contact [David L. Kelleher](#) at Jackson & Campbell, P.C.

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