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OSHA reverses course on COVID-19 hospitalization reporting requirements

The Occupational Safety and Health Administration had initially published guidance in early July explaining when COVID-19 cases had to be reported, **and then without explanation or announcement retracted that guidance.** OSHA has now issued **new guidance** that clarifies the circumstances under which cases involving either an admission to a hospital or a fatality must be reported to the nearest OSHA Area Office.

OSHA's new guidance for cases involving admission to a hospital is consistent with the existing recordkeeping rule on reporting, and the case analysis that we recommended in August:

Under **29 CFR 1904.39(b)(6)**, employers are only required to report in-patient hospitalizations to OSHA if the hospitalization "occurs within twenty-four (24) hours of the work-related incident." For cases of COVID-19, the term "incident" means an exposure to SARS-CoV-2 in the workplace. Therefore, in order to be reportable, an in-patient hospitalization due to COVID-19 must occur within 24 hours of an exposure to SARS-CoV-2 at work. The employer must report such hospitalization within 24 hours of knowing both that the employee has been in-patient hospitalized and that the reason for the hospitalization was a work-related case of COVID-19. Thus, if an employer learns that an employee was in-patient hospitalized within 24 hours of a work-related incident, and determines afterward that the cause of the in-patient hospitalization was a work-related case of COVID-19, the case must be reported within 24 hours of that determination. [Citation omitted.]

COVID-19-related fatality cases must be reported to OSHA no later than eight hours after the employer learns both that an employee had tested positive for COVID-19 and that the employee died as a result. But as the new guidance provides, fatality cases must be reported only if the fatality occurred within 30 days of the employee's last work-related exposure to coronavirus, which under most circumstances would be the last day the employee was at work.

Lessons learned

Many employers have been reporting COVID-19 hospitalization cases unnecessarily, believing incorrectly that all such cases needed to be reported within 24 hours of the admission to a hospital. With this new guidance, OSHA has stayed true to its existing regulation, which provides that the admission must be within 24 hours of the last work-related exposure.

Please also remember to analyze carefully whether COVID-19 cases at



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your facility are work-related, because OSHA has created a significant exception if an employer can find “an alternative explanation” for the case, such as an exposure away from work.

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