OSHA Relaxes Requirement for Work-related Assessment for COVID-19 Recordkeeping for Certain Employers

April 13, 2020 Matthew Deffebach, Mini Kapoor

PRACTICES OSHA, Employment Litigation, Labor and Employment, Litigation

OSHA requires that covered employers record certain work-related injuries and illnesses on their OSHA 300 log. Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and employers are responsible for recording cases of COVID-19, if all of the following are met:

- The case is a confirmed case of COVID-19;
- The case is work-related, as defined by 29 CFR 1904.5; and
- The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g., medical treatment beyond first-aid, and days away from work).

Under OSHA regulation 29 CFR 1904.5(a), an illness is work-related if "an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness." And an illness is generally presumed to be work-related if it resulted from an exposure in the work environment (which includes physical locations and equipment used by the employee in the course of work).

In the current environment of community spread of coronavirus infection, it may be difficult for employers to determine whether an employee's infection is work-related. Recognizing this difficulty in its guidance dated April 10, 2020, OSHA relaxed the requirement of "work-related assessment" for certain employers. Specifically, OSHA acknowledged that in areas where there is ongoing community spread of coronavirus infection, employers other than those in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions may have difficulty in determining whether the infected employees contracted COVID-19 due to exposures at work. For employers (other than those listed above), until further notice, OSHA is not requiring a determination of whether the illness was work-related for recordkeeping purposes, except where:

- There is objective evidence that a COVID-19 case may be work-related. This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and
- The evidence was reasonably available to the employer. For purposes of this guidance from OSHA, examples of reasonably available evidence include 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.

OSHA believes that this guidance will enable employers in areas of widespread community transmission to focus their efforts on implementing good hygiene practices in their workplaces, and

otherwise mitigating COVID-19's effects, rather than on making difficult work-relatedness decisions in circumstances where there is community spread.

Importantly, according to OSHA, community spread means that "people have been infected with the virus in an area, including some who are not sure how or where they became infected." Under this broad definition of community spread and under the current state of coronavirus infection, arguably OSHA has relaxed the requirement for the work-related assessment in the entire country. Thus, until further notice, employers (other than those listed above) no longer need to make a determination of work-relatedness for recordkeeping purposes.

But employers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions must continue to make work-relatedness determinations pursuant to 29 CFR 1904.

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