

COVID-19 LEGAL ALERT

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COVID-19 – Interim OSHA Update Regarding Recording Requirements

By [Michael B. Pascoe](#)

With many construction projects being deemed essential and with employees returning to construction sites, it is important to understand OSHA reporting requirements for cases of COVID-19. OSHA has issued interim guidance to its CSHOs regarding recording requirements for cases of COVID-19 as an occupational illness. To trigger these requirements, the case must meet three criteria: (1) the case is a confirmed case as defined by the CDC; (2) the case is work related; and (3) the case involves one or more of the general recording criteria set forth in 29 CFR §1904.7.

A confirmed case is one where the employee has at least one respiratory specimen that tested positive for SARS-CoV-2, the virus that causes COVID-19. CDC guidance on this topic can be found [here](#).

Determining work-relatedness is, practically speaking, very difficult. The criteria for a case being work related are set forth in 29 CFR §1904.5. An illness is considered to be 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.” 29 CFR §1904.5(a). OSHA has provided additional guidance on determining “work relatedness” setting forth two circumstances that support a determination that the illness is work related:

1. 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
2. The evidence was reasonably available to the employer. For purposes of this memorandum, 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.

We have recommended that clients maintain records from their own employees, and from subcontractors, confirming that there is daily testing for symptoms of COVID-19. The easiest test will be taking temperatures daily for all employees. Maintaining these records will help address these two circumstances as it constitutes “objective evidence” of whether an individual is exhibiting symptoms of COVID-19.

The recording criteria are set forth in 29 CFR § 1904.7. An employer must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. An employer must also consider a case to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed

health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

OSHA has confirmed that an employer's focus should remain on enforcement of good hygiene protocols and mitigation efforts to prevent the spread of COVID-19 rather than on attempting to determine work-relatedness. The full memorandum issued to CSHO's can be found [here](#).

Hahn Loeser's Construction Group is available to assist with this, and with any other OSHA issues that may arise on your projects. If you have questions, please reach out to your primary contact at Hahn Loeser, or contact one of the attorneys listed below for more information.

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