

Did Your Employee Contract COVID-19 at Work?

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The U.S. Department of Labor Occupational Safety and Health Administration has issued new guidance regarding an employer's investigation and recording obligations when an employee is diagnosed with COVID-19.

OSHA further indicated that it will now be enforcing [these investigation and recording obligations](#) in all industries. Temporary guidance had stated that, except for specific high-risk employers, OSHA would enforce recording obligations only where there was objective, reasonably available evidence of work-relatedness.

OSHA regulations provide that an injury or 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. Work-relatedness must be determined following a reasonable investigation. If the incident results in death, days away from work, modified work, medical treatment beyond first aid, loss of consciousness or "significant injury," the employer must also record the injury on an OSHA log. Employers in Pennsylvania must also report any work-related injury or illness to the appropriate workers' compensation carrier.

Because of the difficulty of determining work-relatedness of COVID-19, OSHA will be exercising enforcement discretion in assessing employers' investigation efforts. OSHA recommends that an employer at least consider the following:

- Ask the affected employee how they believe they contracted COVID-19
- Discuss with the affected employee their work and out-of-work activities that may have led to the illness
- Review the employee's work environment for potential exposure, including any other instances of workers being diagnosed

OSHA further noted the following examples that, in most instances, it believes should lead to a conclusion of work-relatedness, unless there is an alternative explanation:

- Several cases develop among workers who work closely together
- Employee contracts COVID-19 after lengthy, close exposure to a particular customer or coworker who has a confirmed diagnosis
- Employee's job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission

Employers and OSHA agents are instructed to give "due weight" to evidence of cause provided by the employee, medical providers and public health authorities.

In light of the new guidance, employers may wish to prepare a questionnaire or checklist for use in investigations when an employee receives a confirmed diagnosis.

The Barley Snyder Employment Law Group can assist you in creating a process for investigating claims or consulting on specific cases. If you have any questions or concerns, please [contact me](#) or [reach out to anyone in the group](#).