

FAQs FOR EMPLOYERS REGARDING COVID-19 OSHA COMPLIANCE

Q: What employers are covered by OSHA?

A: The Occupational Safety and Health Act (“OSHA”) covers most private sector employers in addition to some public sector employers. OSHA does not cover individuals who are self-employed or workplace hazards regulated by another federal agency (e.g., the Department of Energy or the Coast Guard).

Q: What OSHA regulations or requirements, if any, are applicable to the COVID-19 outbreak?

A: There is no specific OSHA standard covering COVID-19. However, OSHA’s General Duty Clause requires employers to furnish to each worker a safe workplace. This means that OSHA may hold employers responsible for not doing enough to protect their employees against the virus. Additionally, OSHA points out that employers should specifically be aware of OSHA’s existing standards on [personal protective equipment](#) (“PPE”), [bloodborne pathogens](#), and [sanitation](#). Each of these standards and requirements have potential applicability in dealing with the coronavirus and/or may provide a framework to control some sources of the virus. Employers should therefore consult these standards in implementing an appropriate preparation and response plan to reduce the likelihood of drawing an OSHA citation due to a COVID-19 situation.

Q: How can I take steps to protect my employees against COVID-19?

A: OSHA’s [Guidance on Preparing Workplaces for COVID-19](#) (issued on March 9, 2020) provides the following requirements for all employers to protect their employees against the spread of COVID-19:

- Develop an infectious disease preparedness and response plan;
- Promote proper hygiene and implement routine cleaning and disinfecting practices;
- Develop policies and procedures for prompt identification and isolation of sick people;
- Develop, implement, and communicate workplace flexibilities and protections; and

- Implement workplace controls to protect against the spread of COVID-19 (e.g., install physical barriers, provide PPE, minimize contact among workers, clients, and customers, etc.).

Q: What steps should I take to comply with OSHA's recording and reporting obligations?

A: Employers should take the following steps to comply with OSHA's recording and reporting obligations:

- Ask all employees who have COVID-19 symptoms to stay away from the workplace and obtain appropriate medical care;
- Take reasonable steps to attempt to determine whether a confirmed case of COVID-19 resulted from work-related exposure; and
- Report to OSHA any event where an employee is hospitalized or dies from work-related exposure to COVID-19.

Q: Will OSHA enforce its recordkeeping regulations requiring employers to make work-related determinations for COVID-19?

A: Generally, no. OSHA's [interim guidance](#) (issued on April 10, 2020), acknowledges that determining whether an employee's COVID-19 diagnosis is work-related is difficult. Accordingly, OSHA advises that it will generally not enforce the recordkeeping regulations requirement for employers to make "work-related" determinations for COVID-19 cases during the pandemic. However, there are a few exceptions to the temporary non-enforcement:

- Employers in the healthcare/emergency response industries and correctional institutions must continue to make work-relatedness determinations as defined in OSHA's regulations.
- Other employers must continue to make the same work-relatedness determinations where: (1) there is objective evidence that a confirmed case of COVID-19 may be work-related (e.g., a number of cases developing among close coworkers without alternative explanation; and (2) such evidence is reasonably available to the employer (e.g., information provided directly by the employees or learned in the ordinary course of managing the business/employees).

OSHA defines “work-related” to be “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.”

Q: Do I have to report to OSHA an employee with a “confirmed case” of COVID-19?

A: Generally, yes. Employers should report to OSHA any confirmed case of COVID-19 if the following two requirements are met: (1) the confirmed case of COVID-19 is work-related; and (2) the employee is hospitalized as an in-patient or dies because of the confirmed case of COVID-19.

“Confirmed case” in this context means confirmed in a laboratory. Neither a person under investigation for suspected COVID-19 nor a presumptive positive for COVID-19 is considered a confirmed case. Therefore, an employee who has symptoms of COVID-19 or is a suspected case of COVID-19, without laboratory confirmation, does not meet the Center for Disease Control definition of “confirmed case,” and the illness does not have to be reported to OSHA.

Q: How soon must I report to OSHA that an employee has been hospitalized or died because of a confirmed case of COVID-19?

A: An employer must report COVID-19 related deaths to OSHA within 8 hours, and COVID-19 related in-patient hospitalization within 24 hours. However, OSHA does not require reporting if the in-patient hospitalization occurs more than 24 hours after the work-related incident leading to the infection, or if the death occurs more than 30 days after the work-related incident leading to the infection.

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