

CLIENT ALERT: OSHA Revises Recordkeeping Guidance
May 27, 2020

Over the past few weeks, many of us have focused on re-opening plans and adjusting to the “new” normal. In the midst of these developments, OSHA revised their COVID-19 recordkeeping requirements. Here’s what you need to know.

Under OSHA’s recordkeeping requirements, employers must record cases of COVID-19 if: 1) the case is confirmed by health care officials, 2) the case is work-related, and 3) results in death, days away from work, restricted work, or medical treatment. Illnesses are “work-related” when they result from events or exposures in the work environment. OSHA’s May 19 memo helps employers make work-relatedness decisions and comply with their recordkeeping obligations. In this new memo, OSHA states that upon learning of the employee’s COVID-19 illness, employers should 1) ask the employee how they believe they contracted the illness, 2) discuss the employee’s work and out-of-work activities that may have led to the illness, while respecting privacy, and 3) review the employee’s work environment for exposure, including whether other workers in that environment contracted COVID-19. Employers should consider information reasonably available. If you later learn more information about the employee’s illness, use that information to decide if you made a reasonable work-relatedness determination.

In their new guidance, OSHA also includes examples of “evidence that may weigh in favor of or against work-relatedness.” The guidance document offers the following examples:

- Examples suggesting work-relatedness:
 - Several confirmed COVID-19 cases among employees who work closely together, and no alternative explanation
 - Lengthy, close contact with a specific customer or co-worker with a confirmed case of COVID-19, and no alternative explanation
 - The employee’s job duties involve frequent, close exposure to the general public in an area with ongoing community transmission, and no alternative explanation
- Examples against work-relatedness:
 - The employee is the only individual in their area with COVID-19 and does not have frequent contact with the general public, regardless of community spread
 - Outside of the workplace, the employee closely and frequently associates with a family member, significant other, or friend who is not a co-worker, has COVID-19, and likely exposed the employee while infectious

If an employer engages in a reasonable and good faith inquiry into the origins of their employee's COVID-19 illness but cannot determine if the employee was exposed in the workplace, the employer need not record. Recording a COVID-19 illness does not necessarily mean the employer has done anything wrong or has violated an OSHA standard. Ultimately, OSHA recognizes that "in many instances it remains difficult to determine whether a COVID-19 illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace."

OSHA's full guidance document can be accessed [here](#). For more information, or to discuss a specific case, contact Peter Lowe at plowe@brannlaw.com or 207-754-5672, or Dan Stockford at dstockford@brannlaw.com or 207-607-3290.