



### **COVID 19 - Again a potentially recordable case**

If the information coming out about COVID 19 wasn't confusing enough, Federal OSHA reversed their stance, for the second time, on confirmed cases being potentially a recordable entry on employers OSHA 300 logs effective May 26, 2020.

Oregon OSHA reported that they will adopt this latest decision until further notice. While this is not great news, it is very unlikely in most construction settings that a confirmed case will meet the general recording criteria - specifically work relatedness.

OSHA provided additional guidance for their compliance officers (CSHOs) to help establish if employers thoroughly examined factors in the workplace that could contribute to, or significantly reduce, the likelihood the confirmed case is work related.

This means employers need to document their efforts to prevent or reduce workplace exposures and track all steps taken to determine work relatedness.

Examples given from OSHA's [Memorandum 5/19/20](#):

The evidence that a COVID-19 illness was contracted at work. CSHOs should take into account all reasonably available evidence, in the manner described above, to determine whether an employer has complied with its recording obligation. This cannot be reduced to a ready formula, but certain types of evidence may weigh in favor of or against work-relatedness. For instance:

- COVID-19 illnesses are likely work-related when several cases develop among workers who work closely together and there is no alternative explanation.
- An employee's COVID-19 illness is likely work-related if it is contracted shortly after lengthy, close exposure to a particular customer or coworker who has a confirmed case of COVID-19 and there is no alternative explanation.
- An employee's COVID-19 illness is likely work-related if his job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation.
- An employee's COVID-19 illness is likely not work-related if she is the only worker to contract COVID-19 in her vicinity and her job duties do not include having frequent contact with the general public, regardless of the rate of community spread.
- An employee's COVID-19 illness is likely not work-related if he, outside the workplace, closely and frequently associates with someone (e.g., a family member, significant other, or close friend) who (1) has COVID-19; (2) is not a coworker, and (3) exposes the employee during the period in which the individual is likely infectious.
- CSHOs should give due weight to any evidence of causation, pertaining to the employee illness, at issue provided by medical providers, public health authorities, or the employee herself.

If, after the reasonable and good faith inquiry described above, the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does **NOT** need to record that COVID-19 illness.

Contact me if you have any questions.

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