

# COVID 19: OSHA RECORDABLE ILLNESS INFORMATION

By Kevin Donnelly | Updated April 22, 2020

## What you need to know

Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness. Employers are responsible for recording cases of COVID-19 if:

1. The case is a confirmed case of COVID-19, as defined by Centers for Disease Control and Prevention (CDC)
2. The case is work-related as defined by 29 CFR § 1904.5
3. The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.

On March 11, the World Health Organization (WHO) declared COVID-19 a global pandemic, and the extent of transmission is a rapidly evolving issue.

## Who does it affect

### All employers who fall under the OSHA Recordkeeping Rule 29 CFR part 1904

- » In areas where there is ongoing community transmission, employers other than those in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions may have difficulty making determinations about whether workers who contracted COVID-19 did so due to exposures at work. In light of those difficulties, OSHA is exercising its enforcement discretion in order to provide certainty to the regulated community.
- » Employers of workers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions must continue to make work-relatedness determinations pursuant to 29 CFR § 1904. Until further notice, however, OSHA will not enforce 29 CFR § 1904 to require other employers to make the same work-relatedness determinations, except where:
  - 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
  - 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.



## Why it's Important

OSHA mandatory recordkeeping regulations provides the information needed to identify and target potential enforcement actions those establishments with high rates of work-related injuries and illnesses. Failure to provide OSHA with accurate recordkeeping information may potentially violate Recordkeeping Rule 29 CFR part 1904. Violations of this rule may result in monetary fines and further enforcement actions.

Current OSHA Reporting Criteria is Applicable to Work Related COVID-19 Exposure:

- » If an employer is not immediately aware of a reportable fatality, in-patient hospitalization, amputation, or loss of an eye that was the result of a work-related incident, a report to OSHA must be made within the following time period after the employer or its agent(s) learns that the reportable event was the result of a work-related incident: Eight (8) hours for a fatality, and twenty-four (24) hours for an inpatient hospitalization, an amputation, or a loss of an eye. Employers must report a fatality if it occurs within 30 days of the work-related incident.
- » All work related COVID-19 cases must be monitored and updated by the employer according to the above established recordkeeping regulations to avoid penalty.

## How to Determine if a COVID-19 Case is Recordable

COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all of the following are met:

- » The case is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);
- » The case is work-related, as defined by 29 CFR 1904.5; and
- » The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work).

## Interpretation of COVID-19 Recordable Cases:

1. An employee of XYZ Healthcare tends to a patient who has tested positive for COVID-19. Days later, the employee tending to the patient who tested positive for COVID-19 becomes ill. Upon being tested, the employee is confirmed to have contracted COVID-19. This case would be recordable as it is known direct contact with COVID-19 was established via the working environment.
2. An Employee working as a retail cashier suddenly became ill during work hours after assisting numerous customers during a busy work week. The Employee sought medical care where it was determined that they tested positive for COVID-19. There are no known cases of COVID-19 at the retail employer. Since this is the first case effecting the employer and there is no confirmed/known source, the case would not be recordable. Subsequent cases of COVID-19 effecting retail employees that occurred after the first known cashier case would be recordable.

## COVID-19 Frequently Cited OSHA Standards:

- » 29 CFR § 1904, Recording and Reporting Occupational Injuries and Illness.
- » 29 CFR § 1910.132, General Requirements - Personal Protective Equipment.
- » 29 CFR § 1910.133, Eye and Face protection.
- » 29 CFR § 1910.134, Respiratory Protection.
- » 29 CFR § 1910.141, Sanitation.
- » 29 CFR § 1910.145, Specification for Accident Prevention Signs and Tags.
- » 29 CFR § 1910.1020, Access to Employee Exposure and Medical Records.
- » Section 5(a)(1), General Duty Clause of the OSH Act.

### For more information please view

**OSHA COVID-19 Preparation:** <https://www.osha.gov/Publications/OSHA3990.pdf>

**OSHA Enforcement Guidance:** [https://www.osha.gov/SLTC/covid-19/standards.html#temp\\_enforcement\\_guidance](https://www.osha.gov/SLTC/covid-19/standards.html#temp_enforcement_guidance)

**OSHA COVID-19 Enforcement Memorandum:** <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>

**OSHA COVID-19 Recordkeeping:** <https://www.osha.gov/SLTC/covid-19/standards.html>

**OSHA Recordkeeping Rule:** <https://www.osha.gov/recordkeeping/>

**OSHA Recordkeeping FAQ:** <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.7>

**CDC COVID-19 Information:** <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html>



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