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Reporting Incidents of Work-Related COVID-19 Fatalities and Hospitalizations

On September 30, 2020, the Occupational Safety and Health Administration (OSHA) issued new regulatory guidance to clarify employer reporting requirements of COVID-19 related work incidents that lead to either an employee fatality or hospitalization. The reporting requirement for fatalities from a work-related COVID-19 infection is triggered when an employee dies within 30 days of being exposed to COVID-19 while at work. The employer then has eight hours from the time it learns of the death and knows that the cause of death was a work-related case of COVID-19, to report the incident to OSHA. Employers are also required to report incidents where an employee has been hospitalized as a result of COVID-19 within 24 hours of learning of it, but only if such in-patient hospitalization occurred within 24 hours of the work-related exposure to the virus.

But when and how do employers determine if the exposure is “work-related”, requiring them to report?

What is a “Work-Related Incident”?

A work-related incident occurs when an employee is exposed to SARS-CoV-2, the virus that causes COVID-19, in the workplace. The onus is on the employer to make the difficult determination as to whether the employee was exposed to the virus at work. Circumstances that could give rise to the reasonable inference that an employee having contracted the virus was work-related include, but are not limited to:

1. job duties that require the employee to frequently interact with members of the public,
2. knowledge that the infected employee had contact with another employee who was confirmed positive for COVID-19, or
3. where several employees who regularly have close contact in the workplace have tested positive.

Employers should make all relevant inquiries to ascertain this information while also keeping employee medical information confidential at all times.

How Can an Employer Make a Required Report to OSHA?

Employers may report an employee fatality or in-patient hospitalization to OSHA by submitting an [online reporting form](#) on the agency’s website, by calling the OSHA 24-hour hotline at 1-800-321-OSHA (6742) or by calling the nearest [OSHA regional office](#) directly. When making a report, an employer must advise OSHA of the: (1) business name; (2) name(s) of employee(s) affected; (3) location(s) and time(s) of the incident(s); (4) brief description of the incident(s); and (5) appropriate contact person and phone number (unless the report is made anonymously). See 29 CFR 904.39(b)(2).



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Are Employers Required to Notify Other Employees?

While there is no legal requirement for employers to notify their employees if a co-worker dies or falls ill as a result of COVID-19, both the Centers for Disease Control (CDC) and OSHA encourage employers to notify affected employees of any potential exposure to help reduce spread of the virus as long as all employee medical information is kept confidential under the Americans with Disabilities Act (ADA) and applicable state and local laws. Similarly, employers have a duty to take steps to protect their employees from viral exposure such as sanitizing workspaces, encouraging employees to wear masks and stay home if they are sick, taking action if the employer learns of a confirmed COVID-19 case that could potentially expose their employees to the virus, or requiring testing or screening programs to monitor employees for COVID-19 symptoms.

Final Thoughts

Information sought by OSHA in its online reporting form or by phone may be more comprehensive than what an employer is legally obligated to disclose. As a result, if an employer determines that it may have a reportable incident, it is advisable for the employer to consult with legal counsel prior to making a report to OSHA.

The information provided in this Client Alert does not, nor is it intended to, constitute legal advice. Readers should not take or refrain from taking any action based on any information contained in this Client Alert without first seeking legal advice.

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