

New OSHA COVID-19 reporting: Do you know what's required?

**Recordkeeping's
being enforced
until further notice**



All employers must now determine whether employees who have the [coronavirus](#) contracted it at work, according to new guidance issued by OSHA.

“To comply with the new enforcement guidance, whenever an employee becomes ill with COVID-19, an employer needs to conduct a mini-investigation,” said Annette Idalski, an attorney at Chamberlain Hrdlicka.

OSHA’s [new guidance](#), which became effective May 26 and will remain in effect until further notice, requires employers with more than 10 employees to record work-related employee coronavirus cases. This is a reversal from the agency’s April 10 guidance that only required healthcare employers to record cases.

Recording coronavirus cases

According to OSHA, employers must record cases on its [Form 300](#) if an employee’s illness is:

- diagnosed as the coronavirus, as defined by the Centers for Disease Control and Prevention (CDC)
- work-related
- meets OSHA’s recording criteria – death, days away from work, medical treatment beyond first aid, or
- a diagnosis considered significant by a healthcare professional.

Because of the difficulty in determining whether employees diagnosed with the coronavirus were exposed at work, an employer must make “reasonable” efforts to come to a determination, says OSHA.

According to Burr & Forman attorney Kathryn Willis, these efforts should include:

- Asking the employee limited questions about how they believe they contracted coronavirus
- Making inquiries about their work and nonwork activities, and
- Investigating their job duties and work environment to consider if other workers in the area tested positive.

However, avoid extensive medical inquiries that could [violate an employee’s right to privacy](#) and the ADA, said Willis.

When COVID-19's work-related

According to OSHA, an employee most likely contracted the virus at work (if there's no alternative explanation) if:

- Multiple cases develop among those who work together
- A worker contracts the coronavirus days after a “lengthy and close” exposure to a co-worker or customer with a confirmed case, or
- Job duties include frequent, close exposure to the general public in a locality with ongoing community transmission.

When COVID-19's *not* work-related

Cases of coronavirus are likely not work-related, says OSHA, if an employee:

- is the only one in the workplace to contract it and doesn't have contact with the general public, or
- has frequent and close contact with someone, outside of work, who has COVID-19 and they aren't a co-worker.

If an employer, after a “good faith” evaluation, still can't conclude whether a case is work-related, then it doesn't have to record the illness.

This OSHA guidance “provides a roadmap for employers to make that determination based on reasonable efforts and objective information,” says Ogletree, Deakins, Nash, Smoak & Stewart Attorney Phillip Russell.

State OSHA rules

OSHA has only filed one citation for a recordkeeping violation thus far. However, employers also need to be aware that half of all states have adopted recordkeeping requirements that are enforced by state OSHA agencies. And some state agencies, such as California's Cal/OSHA, have more stringent requirements than federal OSHA.

For More Information

There's a lot of uncertainty about what that new normal will look like, but we do know that **leaders, managers, and HR professionals will shape the future of work.**

That also means they'll spend a lot of time navigating the significant challenges it will pose.

The ADA, employment laws, privacy laws – these will all be stretched and tested by this crisis in ways we've never imagined.

Join your peers for our live workshop [How to Safely Return to Work Amidst COVID-19](#) at 1 PM ET on Tuesday, June 30th, and available on-demand anytime, to prepare yourself and your business to navigate the uncharted waters ahead.

You'll learn how to:

- Conduct an **orderly, legal, and safe** return-to-work procedure
- Anticipate and address the concerns of older employees, employees with disabilities, and employees who are reluctant to return
- Make – *and keep* – your workplace as safe as reasonably possible
- and much more

Click [here](#) for registration and more information.

About the Speaker

Jim Castagnera holds an M.A. in Journalism from Kent State University and a J.D. and Ph.D. (American Studies) from Case Western Reserve University. He practiced law for 36 years as a labor, employment and intellectual-property attorney; general counsel; and associate provost & legal counsel for academic affairs at Rider University.

Currently, he devotes his full-time to writing, teaching and training. He is the chief consultant for Holland Media Services, a writing, training and communications company; a founding member of LMC Conflict Training & Conciliation, Inc., and an officer of the International Cyber, Privacy & Compliance Risk Institute.

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