

When Must Employee Illnesses Be Reported to OSHA?

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[Caroline MeloBob Nichols](#)

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Conscientious safety professionals typically devote a great deal of time over the course of their careers learning when particular instances of physical injury suffered by employees, such as back, knee or wrist pain, must be recorded on OSHA 300 and 301 forms.

Recent contingency planning for potential employee coronavirus cases, however, has reminded occupational safety specialists that work-related illnesses generally must also be recorded if the condition meets the applicable recording criteria of OSHA regulations. Understanding when an illness is OSHA recordable can often be even more daunting than the task of recognizing when a physical injury is properly recorded.

The Basics

With the exception of certain low safety-risk industries, employers with more than 10 employees are required to record on certain OSHA-required records, namely OSHA 300 and 301 forms, “work-related” injuries and illnesses meeting one or more specified criteria of seriousness outlined by OSHA regulations—such as medical treatment beyond first aid or days away from work.

As for the deadline to do so, generally an employer must record within seven calendar days after the business receives information that a recordable work-related injury or illness has occurred.

The regulatory nuances of the determination of what is commonly referred to as “recordability” are many and complex. Moreover, because the vast majority of recordable events are injuries, as opposed to illnesses, safety professionals spend much more time considering what is an injury that must be recorded as opposed to an illness.

Additionally, because the vast majority of employee illnesses are not “work-related” and, therefore, not necessarily recordable, the requirement of recording illnesses, even when applicable, is often overlooked. This inattention can be costly. Specifically, employers may be fined substantial dollar amounts by OSHA for failing to record work-related illnesses - just like injuries.

Moreover, as a practical matter, in some businesses there can be subtle, or not-so-subtle, pressure on supervisory and safety officials to minimize the number of recorded cases. This unfortunate reality exists in certain companies because low levels of recordable injuries and illnesses may be

considered under bonus schemes or otherwise be used to judge the performance of managers or other employees. While these compensation incentives tied to achieving low recorded injury/illness levels are not per se unlawful, employers need to be careful to assure that these incentives do not lead to the failure to record. Specifically, to avoid potentially substantial OSHA fines, businesses must guard against under-recording and carefully consider every potentially work-related illness or injury to determine recordability.

Contagious Illness

Contagious illnesses that employees contract from a coworker, customer, contractor or other person while working are generally recordable if they meet one or more of the general recording criteria - such as medical treatment or days away from work.

To illustrate this point, the regulations indicate that specific examples of potentially recordable contagious illnesses, if contraction is work-related, include “tuberculosis, brucellosis, hepatitis A or plague.”

As an exception to the recording requirements, OSHA regulations specifically provide that employee cases of the “common cold or flu” do not need to be, and should not be, recorded. At the same time, OSHA has warned that this exception does not apply to other contagious viruses, even those that produce similar symptoms, that do not actually constitute the “common cold or flu” strain.

As a result in 2009, OSHA warned employers that employee cases of the H1N1 virus that are “work-related” must be recorded on OSHA 300 and 301 forms.

Importantly, this year, OSHA has reached the same conclusion about coronavirus cases that may occur may be work-related. Specifically, employee bouts with the coronavirus are recordable if, again, the particular case is work-related and other criteria meet the criteria test.

Work-Relatedness

Of course, with any illness, if it is not “work-related,” then it is not recordable. While that determination may seem simple, in reality it often is not.

OSHA guidance points out that, for example, if “an employee reports symptoms of a contagious disease that affects the public at large, such as a staphylococcus infection (‘staph’ infection) or Lyme disease, and the workplace is only one possible source of the infection,” the employer must engage in an analysis of potential work-relatedness.

OSHA instructs that “[i]n these situations, the employer must examine the employee’s work duties and environment to determine whether it is more likely than not that one or more events or exposures at work caused or contributed to the condition.” In engaging in that inquiry, if the employer determines that it is unlikely that the precipitating event or exposure occurred in the work environment, the employer would not record the case.

Mental Illnesses

Employers must bear in mind that OSHA takes a fundamentally different approach to determining when mental illnesses should be recorded - as opposed to physical illnesses. Specifically, OSHA regulations broadly direct that mental illnesses are not to be recorded *unless* “the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.”

Notably, this general rule applies to when work-related stress disorders must be recorded. Specifically in 2004 guidance, OSHA explained that “[m]ental illnesses, such as depression or anxiety disorder, that have work-related stress as a contributing factor, are recordable if the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related, and the case meets one or more of the general recording criteria.”

Diseases Tied to Workplace Exposure

Diseases such as silicosis, byssinosis, or asbestosis for which workplace exposure to substances may have been a contributing factor, are subject to the recording requirement just like other illnesses that are work-related. Determining work-relatedness in the context of these illnesses can be especially difficult, but that does not excuse employers from engaging in the required analysis as to whether such a case should be recorded on the employer’s OSHA recordkeeping forms.

In fact, under OSHA regulations these types of “significant progressive diseases” once diagnosed may be subject to the recording requirement even before the illness requires medical treatment, work restrictions, or days away from work.

Guidance for Employers

1. Determining the work-relatedness of illnesses is often a difficult task, but engaging in the analysis is important – particularly when an employee or a healthcare provider reports that a disease or other illness stems, or may stem, in whole or part, from work-related conditions. When this issue arises, the employer should engage in a careful assessment as to whether that condition should be recorded through the OSHA 300 and 301 forms.
2. As employers continue to worry about the spread of the coronavirus and the potential for future pandemics involving other viruses or other illnesses (other than the common cold or flu), they must not lose sight of the fact that if the employee contracts the illness at work, through a coworker or other individual, and the condition otherwise meets OSHA recording criteria, it must be properly and timely recorded.
3. Employers should recognize that they can and should utilize the expertise of medical professionals when trying to ascertain whether a particular illness should be recorded.

4. In engaging in these determinations, employers should also make full use of OSHA's extensive online resources, including the OSHA Recordkeeping Handbook maintained on OSHA's website.

Bob Nichols is a partner in Bracewell LLP's Houston office. Bob has over 30 years of experience in employment law, having represented employers in litigation, administrative investigations, and other actions related to employment including the defense of claims of alleged discrimination, retaliation, harassment, wrongful discharge, and occupational safety and health violations. Caroline Melo is an associate at Bracewell, providing advice and counsel to employers regarding a variety of workplace matters.