OSHA (Again) Publishes New FAQs On Reporting Coronavirus In-Patient Hospitalizations

Insights
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The U.S. Occupational Safety and Health Administration (OSHA) just published its newest series of answers to its COVID-19 Frequently Asked Questions (FAQs) addressing when an employer must report to OSHA an employee's hospitalization as a result of contracting COVID-19 at work. Why is this September 30 update important? Mainly because employers have been confused by OSHA's reporting requirements for COVID-19 cases since the pandemic began. To be blunt, OSHA's explanations have been extremely confusing. Indeed, OSHA published FAQs on its website on July 15 attempting to interpret the hospitalization reporting requirement of 29 CFR 1904.39(b)(6). Apparently, the guidance created so much confusion for employers that OSHA removed the FAQs from its website without explanation. But thankfully, the struggle to understand the hospitalization reporting requirements for work-related COVID-19 cases is over … for now. Here's what employers need to know about OSHA's newest interpretation of an employer's reporting obligations.

OSHA's New Guidance On Reporting COVID-19 In-Patient Hospitalizations And Fatalities
Under its recent FAQs, OSHA clarified that for cases of COVID-19, the term "incident" means an exposure to SARS-CoV-2 in the workplace. OSHA notes that, under 29 CFR 1904.39(b)(6), employers are only required to report in-patient hospitalizations to OSHA if the hospitalization "occurs within 24 hours of the work-related incident." Therefore, to be reportable, an in-patient hospitalization due to COVID-19 must occur within 24 hours of an exposure to SARS-CoV-2 at work.

According to OSHA, this means an employer must report such hospitalization within 24 hours of knowing both that: (1) the employee has been in-patient hospitalized; and, (2) that the reason for the hospitalization was a work-related case of COVID-19. Thus, if an employer learns that an employee was in-patient hospitalized within 24 hours of a work-related incident and determines afterward that the cause of the in-patient hospitalization was a work-related case of COVID-19, the case must be reported within 24 hours of that determination.

The FAQs also provide that an employer must "report a fatality to OSHA if the fatality occurs within 30 days of the work-related incident." Therefore, to be reportable, a fatality due to COVID-19 must occur within 30 days of an exposure to SARS-CoV-2 at work.

According to OSHA, this means an employer must report the fatality within eight hours of knowing both that: (1) the employee has died; and, (2) that the cause of death was a work-related case of

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COVID-19. Thus, if an employer learns that an employee died within 30 days of a work-related incident and determines afterward that the cause of the death was a work-related case of COVID-19, the case must be reported within eight hours of that determination.

For many employers, OSHA's new FAQs provide some clarity as to the agency's reporting requirements and offer a glimmer of hope to employers who have been cited for untimely reporting. OSHA's position, however, could change with the upcoming election.

What Should Employers Do Now?

Employers need to remember that an employer's reporting requirements are codified in OSHA regulations, not in any FAQs posted on the agency's website. When in doubt, employers should refer to what 29 CFR 1904.5 and 29 CFR 1904.39 require and report to OSHA accordingly. Employers in State Plan states should keep in mind that certain states, like Kentucky, may have different reporting deadlines, including not having a 30-day limit on reporting of fatalities. Therefore, the best practice is to contact your state's Occupational Safety and Health Program to determine if the state program comports with federal standards and policies or contact your Fisher Phillips attorney.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate – especially as it relates to responses to these FAQs. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this alert, or any member of our Post-Pandemic Strategy Group Roster.

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