Does Recording An Employee's COVID-19 Case on Your OSHA 300 Log Mean They Get Workers' Compensation Benefits? A 4-Step Roadmap for Employers

Insights
5.04.21

The COVID-19 pandemic has created many unique workplace safety issues for employers. One of the most challenging developments has been whether an employee's COVID-19 case should go on your OSHA 300 logs pursuant to the Occupational Safety and Health Administration's (OSHA) recordability guidance for employees' cases of the virus and the impact of recording such an illness.

Unless your company has 10 or fewer employees or your workplace is otherwise exempt from such requirements, OSHA encourages recording on your 300 logs work-related COVID-19 cases among your workforce. You have to record the COVID-19 case unless, after conducting a reasonable and good faith inquiry, you cannot determine whether it is more likely than not that exposure in the workplace caused a case of COVID-19.

This requirement, and the number of lawsuits and workers' compensation claims brought against employers related to COVID-19, has caused employers concerns about documenting that any workplace illness or injury related to the pandemic is work-related. Employers have asked whether recording COVID-19 infections as work-related on their OSHA 300 Logs allow such an admission, and whether that determination could be used by workers' attorney in workers' compensation claims to substantiate that employee exposure was work-related. The answers are not straightforward, as the summary below reveals.

Recordability Under OSHA

The Occupational Safety and Health Act (OSHA Act) is the most broadly applicable statute regulating worker safety and health. Under the law, non-exempt companies must record most work-related employee fatalities, injuries, and illnesses on OSHA 300 logs. Injuries and illnesses are recordable if they are work-related and result in any of the following:

- death;
- days away from work;
- restricted work or transfer to another job;
- medical treatment beyond first aid;
- loss of consciousness; or

- loss of consciousness; or
- a significant injury or illness diagnosed by a physician or other licensed health care professional.

An injury or illness is considered "work-related" if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. OSHA notes that "work-relatedness is presumed for injuries and illnesses resulting from events occurring in the work environment" unless a specifically identified exception applies.

OSHA Issues Guidance on Recording COVID-19 Cases

OSHA issued its most recent, Revised Enforcement Guidance for recording cases of COVID-19 in May 2020, applicable to all employers not exempt from recordkeeping requirements. Under this revised guidance – which previously only applied to healthcare workers, emergency responders, and detention center employees – all employers must make determinations of work-relatedness for confirmed COVID-19 cases. Per the guidance, if the employer cannot determine whether it is more likely than not that exposure in the workplace caused a case of COVID-19 after it conducts a reasonable and good-faith inquiry, the employer does not need to record that illness.

Workers' Compensation and COVID-19

State-operated workers' compensation systems allow workers to be paid for injuries suffered in the course of employment without regard to fault through an administrative process. In general, many states provide that employees can receive workers' compensation for accidental injuries arising out of and in the course of employment and such disease or infection resulting from injuries, or for occupational diseases, which are diseases resulting from the type of employment.

Throughout the pandemic, some states have issued directives, guidance, and proposed (or passed) legislation relating to COVID-19's impact on workers' compensation law, including providing presumptions and expanding coverage for essential workers and notably first responders. For example, Utah enacted House Bill 3007, modified by House Bill 5006, creating a rebuttable presumption that first responders and health care providers who contract COVID-19 have a compensable workers' compensation claim. Likewise, on March 31, Virginia enacted House Bill 1985 into law, providing that "COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any health care provider, as defined in § 8.01-581.1, who as part of the provider's employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19, shall be presumed to be an occupational disease that is covered by this title unless such presumptions are overcome by a preponderance of competent evidence to the contrary."

Under these circumstances, the burden of proof for the source of a presumed injury, which usually rests on the injured worker, would fall on the employer. In most circumstances, such presumptions are rebuttable, meaning that the employer can refute a presumption claim by proving the injured worker did not sustain the injury or contract the disease on the job.

worker did not sustain the injury or contract the disease on the job.

What Effect Can Recording COVID-19 Cases on an OSHA 300 Log Have on Workers' Compensation?

The "Purpose" section of OSHA's 300 log recordability rule includes a note stating that "recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits." Indeed, as provided above, the rules for compensability under workers' compensation differ from state to state and do not necessarily affect whether a case needs to be recorded on the OSHA 300 Log, or vice versa.

But while the OSHA 300 Log determination is not necessarily definitive proof of the illness being work-related for workers' compensation purposes, for certain states, potentially, the information and determination provided in the OSHA 300 log could be used as evidence in support of their claim. It could substantiate that an employee's exposure was primarily work-related given that the facts and circumstances surrounding the investigation would be largely the same.

As stated above, OSHA's guidance provides that the employer does not need to record the COVID-19 illness, if after conducting a reasonable and good-faith inquiry, the employer cannot determine ***whether it is more likely than not*** that exposure in the workplace caused a case of COVID-19. Thus, based on the guidance language itself, where the employer has recorded the illness on an OSHA 300 Log, it has presumably determined work-relatedness outweighs non-work relatedness.

Such evidence would be crucial in a state like Rhode Island, for example, where employees would have to show to a reasonable degree of certainty that the condition was likely the result of workplace exposure for a workers' compensation claim to be compensable. That said, even if you made the determination that it was more likely than not that exposure in the workplace caused a case of COVID-19, in workers' compensation (or other cases), you should highlight the fact of the risks of contraction is anywhere, including detailing the "community spread" of COVID-19.

What Can You Do to Minimize the Impact of a COVID-19 Work-Related Determination?

You should conduct robust investigations of each employee's COVID-19 case to determine it is more likely than not that employee contracted the virus at work. Exercising due diligence by taking the following steps will be beneficial in case you need to refute any claim or presumption of work-relatedness arising from a workers' compensation claim.

1. **Thoroughly investigate each COVID-19 case in your workplace to determine if it is work-related**. In assessing work-relatedness, you should:
    - ask the employee how they believe they contracted the COVID-19 illness;
    - while respecting employee privacy, discuss with the employee their work and out-of-work activities that may have led to the COVID-19 illness; and

- review the employee's work environment for potential SARS-CoV-2 exposure. According to OSHA, an employee's COVID-19 illness is likely not work-related if they, outside the workplace, closely and frequently associate with someone (e.g., a family member, significant other, or close friend) who (1) has COVID-19; (2) is not a coworker, and (3) exposes the employee during the period in which the individual is likely infectious;

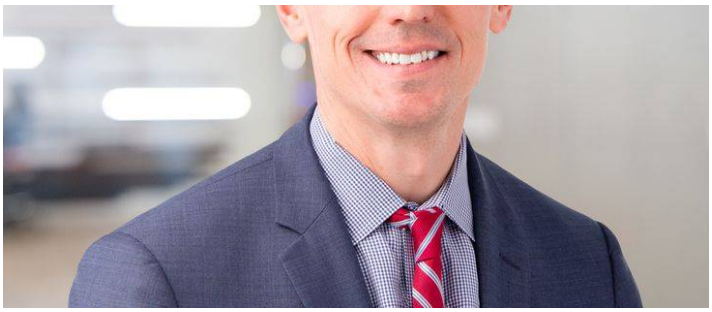
2. **You should only record cases on the OSHA 300 Log if, after conducting the investigation, these factors weigh in favor of a work-related finding**. In doing so, you should understand the potential ramifications of such finding.
3. **Even if you determined previously it was more likely than not that exposure in the workplace caused a case of COVID-19 previously, in workers' compensation (or other cases), you should continue to explore and highlight the fact that the risk of contraction is anywhere**. This would include noting the prevalence of "community spread" of COVID-19 when the employee contracted the virus and providing any additional or new information gathered since making the initial work-related determination; and
4. **Update your OSHA 300 logs to remove non work-related cases**. Under OSHA's 300 log retention regulations, you must update your 300 logs for a period of five years. If the description or outcome of a case changes, you need to remove or line out the original entry and enter the new information. Thus, if you later learn a previously recorded COVID-19 was not actually work-related, you can strike through that entry on your OSHA 300 log.

Conclusion

COVID-19 cases recorded on OSHA 300 logs may not definitively indicate whether an employee is entitled to workers' compensation, but the 300 logs can be used as evidence to support a work-related determination. This is especially significant in states where legal presumptions for COVID-19 have been made.

While respecting employee privacy, you should thoroughly examine exposure in the workplace and explore and highlight the risks of contraction anywhere. Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to our insight system to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this insight, or any member of our Workplace Safety Practice Group.

Related People



Travis W. Vance
Regional Managing Partner
704.778.4164
Email

Patrick W. Dennison
Partner
412.822.6627
Email

Service Focus

Workplace Safety and Catastrophe Management

Trending

COVID-19/Vaccine Resource Center