

WORKPLACE SAFETY OFFICIALS PROVIDE NEW GUIDANCE ON WHEN YOU MUST REPORT MUSCULOSKELETAL INJURIES

Insights
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When are employee musculoskeletal illnesses and injuries required to be recorded and reported to federal workplace safety officials? The Occupational Safety and Health Administration (OSHA) recently released a new memorandum that clarifies when employers are required to record and report such injuries – even if what many employers would consider as minimal treatment was administered. What do you need to know about this May 2 guidance, and what should you do about it?

A Quick Word on OSHA Recordkeeping Requirements

Federal law requires employers to keep records of and record fatalities, injuries, and illnesses if they are:

- work-related
- a new case, and
- result in death, days away from work, restricted work, job transfer, medical treatment beyond first aid, or loss of consciousness.

Employers must also keep records and record such fatalities, injuries, and illnesses that involve a significant injury or illness diagnosed by a physician or other licensed health care professional. There are also recordkeeping and recording requirements for certain needlestick injuries and cuts, medical removal under the medical surveillance requirements of an OSHA standard, work-related Standard

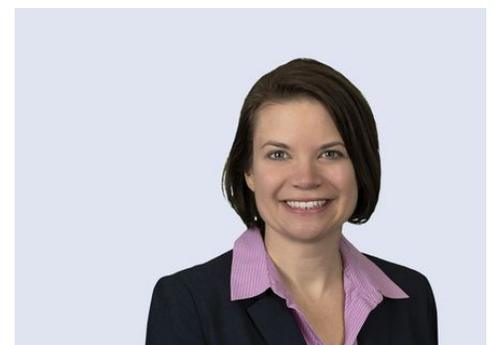
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Threshold Shift in hearing, or occupational exposure to anyone with a known case of active tuberculosis.

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But OSHA's new memo provides helpful guidance to comply with its reporting and recordkeeping requirements when employees have received first aid, Active Release Techniques (ART), and/or exercises and stretching, for their musculoskeletal injuries and illnesses.

First Aid

Occupational musculoskeletal injuries and illnesses are generally not recordable if first aid is the only treatment given to an employee. Federal rules provide a comprehensive definition of the term "first aid." Medical treatment that is not included within this definition is considered medical treatment beyond first aid – which would make those work-related injuries and illnesses recordable.

- The **professional status** of the person providing first aid treatment, such as a physician or other licensed healthcare professional, does not change the comprehensive definition of "first aid."
- The **number of times or length of first aid administered** to treat a work-related musculoskeletal injury or illness does not make an injury or illness recordable. However, OSHA's new memo specifically directs its compliance officers to look for repeated first aid treatment. This is because the agency believes it may indicate that an employer is improperly avoiding recording a work-related injury or illness and/or a violation of OSHA's medical services and first aid standard that requires employers to ensure the ready availability of medical personnel for advice and consultation.
- Importantly, if an employee is only given first aid treatment but the occupational musculoskeletal injury or illness results in **days away from work, restricts work activity at least once per week, or results a transfer of jobs**, then the musculoskeletal injury or illness would be recordable. An exception to this rule is if a restricted work activity is imposed only for the day that the injury or illness occurred.

Active Release Techniques (ART)

OSHA has defined ART as, “a patented movement-based massage technique that targets soft tissues such as muscles, tendons, ligaments, fascia, and nerves and is practiced by licensed healthcare professionals (usually a physical therapist or a chiropractor).” OSHA considers ART to be a “massage” – and massage therapy is considered first aid treatment under its rules. Therefore, if an employee only receives ART, recording of the injury is not required.

- The **professional status** of the person providing ART does not change OSHA’s consideration of ART as first aid treatment.
- A **compliance officer** may request to review an injured worker’s treatment records to determine whether the employee received ART that exceeds what is considered “massage.” For example, if an employee received ART that results in the manipulation of the skeleton, then the workplace injury or illness would be recordable.
- Just as for first aid treatment, if an employee only received ART but it results in **days away from work, restricted work activity that occurs at least once per week, or a transfer of jobs**, then the injury is recordable.

Exercise and Stretching

Exercise or stretching is considered medical treatment when designed and administered to treat a work-related injury or illness as part of a treatment plan that ends once the treatment objectives have been met. Thus, if an employee receives a recommendation to exercise or stretch – whether at work or at home – after a work-related injury or illness, that would make the situation recordable.

- The **professional status** of the person who made the recommendation to exercise or stretch does not change the work-related injury or illness’s recordable status.
- Notably, a **work-related injury or illness must occur** before the recommendation to exercise or stretch is made in order for the injury or illness to be recordable. For example, an injury or illness that is not work-related but results in a recommendation that the employee engage in an exercise program at work would not be recordable.
- Likewise, the **number of times** an employee has been seen by a licensed healthcare professional does not

change the recordability of an injury or illness. That's also true regarding the duration, intensity of care, or number of follow-up visits to receive care.

- Routine employer-created programs such as morning exercise and stretching activities would not fall in this category since they are not prescribed by a healthcare provider to treat a work-related injury or illness.

What Should You Do?

OSHA's compliance officers have been directed by agency leadership to seek employers' first-aid records to determine whether the same name and body part are recorded more than once within a four-week timeframe. For that reason, you should ensure that an employee receiving the previously discussed treatment for a work-related musculoskeletal injury or illness does not need additional medical treatment which would likely make the incident recordable. Keeping accurate records of injuries and illnesses is key to staying in compliance with OSHA's reporting requirements.

Conclusion

If you have any questions, contact the authors of this Insight, your Fisher Phillips attorney, or any member of our [Workplace Safety Practice Group](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on OSHA issues.