



Who Should Notify OSHA of a Workplace Injury During Multi-Employer COVID-19 Essential Work?

Insights

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Many essential businesses operating during the COVID-19 pandemic may be utilizing temporary workers and contractors. Employers using such workers must keep in mind their responsibilities for notifying the Occupational Safety and Health Administration (OSHA) of reportable injuries and illnesses involving these non-employee workers to OSHA. Under some circumstances, you may have to report an injury of a non-employee.

Federal OSHA's General Reporting Rule

Generally, employers must report incidents to federal OSHA when an employee fatality occurs on the job within eight hours of the accident, or when an employee suffers a work-related in-patient hospitalization, amputation, or loss of an eye within 24 hours. Just like all in-patient hospitalization admissions, if an employee is hospitalized because of COVID-19, and the employee contracted COVID-19 while at work, the employer must report that in-patient hospitalization to OSHA – but only if the hospitalization occurs within 24 hours of the employee contracting the virus. 29 CFR 1904.39(b) (6).

If more than employer is present at the worksite at the time of the fatality or reportable injury, who must report the injury to OSHA?

OSHA standard 29 CFR 1904.31(b)(4) provides that companies and their subcontractors, including staffing agencies, must coordinate their efforts to ensure that each injury and illness is **recorded** only once on an OSHA 300 log – by the employer who provides day-to-day supervision. Only one employer can actually provide day-to-day supervision under OSHA's recordkeeping regulations. The determination regarding which entity must record the injuries and illnesses must be based on the facts concerning day-to-day supervision at the worksite.

OSHA has clarified that day-to-day supervision occurs when “in addition to specifying the output, product or result to be accomplished by the person's work, the employer supervises the details, means, methods and processes by which the work is to be accomplished.” This could be a host employer or staffing agency, depending upon the circumstances.

Similarly, 29 CFR 1904.39 provides that “within 24 hours after the in-patient hospitalization of one or more employees...as a result of a work-related incident, you must report the in-patient hospitalization....” The standard does not define “you.” Presumably, it refers to “employer,” based on the preceding use of the term “employee.”

Further, the particular standard does not provide a definition of the employer-employee relationship. OSHA recognizes this ambiguity and provides clarification on its website, stating that it applies the same requirements for **recording** injuries and illnesses on an OSHA 300 log apply to **reporting** reportable work-related incidents. **Therefore, the employer that provides the day-to-day supervision of the worker is responsible for reporting the incident to OSHA.**

OSHA's Guidance on COVID-19 Illnesses

OSHA recently issued guidance for enforcing OSHA's recordkeeping requirements for COVID-19 cases. Recognizing the difficulty in determining whether COVID-19 was contracted while on the job, OSHA will not enforce its recordkeeping requirements that would require employers in areas where there is ongoing community transmission to make work-relatedness determinations for COVID-19 cases, except where:

1. There is objective evidence that a COVID-19 case may be work-related; and
2. The evidence was reasonably available to the employers.

This waiver of enforcement does not apply to employers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting and law enforcement services), and correctional institutions in areas where there is ongoing community transmission. These employers must continue to make work-relatedness determinations.

To date, OSHA has not released similar guidance for reporting COVID-19 cases. You should continue to monitor OSHA guidance related to COVID-19, but at this point there has not been a waiver of reporting requirements.

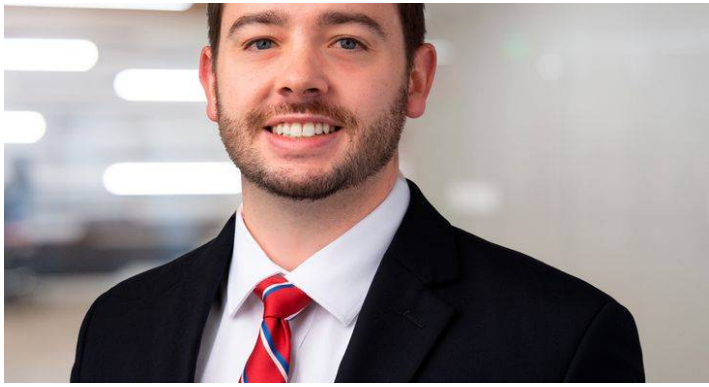
Essential businesses that continue to operate and utilize temporary workers and contractors should keep this guidance in mind when dealing with a work-related in-patient hospitalization resulting from COVID-19. The employer providing the day-to-day supervision of the ill employee is responsible for reporting reportable incidents to OSHA.

This a constantly evolving area, with new guidance being issued nearly every day. If an employee suffers a recordable or reportable injury involving an COVID-19 exposure, seek the advice of counsel to act appropriately.

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