



Mining Industry Considerations During COVID-19 Coronavirus Outbreak

Insights

3.18.20

While the world grapples with COVID-19 and its implications for daily life, those in the mining industry may wonder whether the onset of the pandemic presents any MSHA compliance issues. Indeed, unlike its sister agency OSHA – which put forth a 35-page guidance document and several online resources – MSHA has thus far been silent on the subject. While no MSHA standard or regulation directly addresses anything like COVID-19, certain issues may arise.

Reportable Incidents

The first is whether an instance of employee exposure is reportable to MSHA. Such would be the case only if it constitutes an “occupational illness.” MSHA has defined “occupational illness” as “an illness or disease of a miner which may have resulted from work at a mine or for which an award of compensation is made.” 30 C.F.R. § 50.2(f). Likewise, for purposes of 30 C.F.R. Part 50, a “miner” is defined as “any individual working at a mine.” 30 C.F.R. § 50.2(d). An occupational illness must be reported to MSHA within ten days after diagnosis on a 7000-1 form. Therefore, an instance of COVID-19 could be reportable to MSHA but only if it occurred with respect to a “miner” and if exposure may have resulted from work at a mine or was the subject of a compensation award.

Deadline Extensions

Another compliance issue that has arisen is whether MSHA will grant extensions for deadlines to mandated annual refresher trainings in light of changes to work schedules and prohibitions on group gatherings. To date, MSHA has not published any guidance on the question.

However, we have heard of at least four districts providing a 30-day extension for annual refresher training when requested, including the Northeast, North Central, Vincennes and Western districts. Mine operators should consult with their local districts if meeting a deadline presents a problem due to COVID-19-related restrictions. We have also heard that some within the agency have suggested that operators avail themselves of smaller group settings or online resources to provide training and meet the deadlines.

MSHA Enforcement

Next, as of this writing, there has been no change to MSHA enforcement as a result of COVID-19. MSHA considers itself to be “essential” and will therefore proceed with inspection activities without interruption.

HazCom Considerations

Finally, businesses in all industries have redoubled their efforts to disinfect workplaces and mine operators should consider whether there are any regulatory requirements to meet in doing so. A discussion of hazardous communication (HazCom) requirements related to the use of disinfectants [can be found here](#). Additionally, miners assigned to new tasks related to the disinfecting of workplaces must be given necessary task training under 30 C.F.R. §§ 46.7(a), 48.7(c) or 48.27(c), as applicable to their type of mine.

Conclusion

The Workplace Safety practice group at Fisher Phillips wishes everyone the best in the challenges presented by COVID-19. We will continue to monitor the regulatory landscape and provided updates as developments transpire. Make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of [our COVID-19 Taskforce](#), or review our [Comprehensive and Updated FAQs](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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