Just The Beginning? OSHA Issues First COVID-19-Related Citation

Insights
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A nursing home in Georgia has received the first citation issued by the Occupational Safety and Health Administration (OSHA) related to the COVID-19 outbreak. The citation alleges six nursing home employees were hospitalized as a result of COVID-19 that was contracted while at work and the nursing home failed to report the hospitalizations to OSHA within the statutorily mandated time period. The citation alleges the employees were hospitalized around April 19, but the nursing home did not report the hospitalization to OSHA until May 5. OSHA has proposed a $6,500 fine for the alleged violation and classified the violation as "other than serious."

Reporting COVID-19 Cases: What Employers Need To Know
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).

What Should Employers Do?
Employers should reference the most recent OSHA guidance on recordkeeping enforcement for assistance in determining whether a case of COVID-19 is work-related. The guidance highlights that certain types of evidence weigh in favor of or against work-relatedness. For example, when there is no alternative explanation, a case is likely work related:

- When several cases develop among workers who work closely together;
- If it is contracted after lengthy, close exposure to a customer or coworker who has a confirmed case of COVID-19; or
- If an employee's job duties include having frequent, close exposure to the general public in a locality with widespread transmission.

In the case of the cited nursing home, the widespread transmission in nursing home facilities and that six employees were hospitalized may have been an indication to OSHA that the virus was work-related. It will be interesting, however, to see if the employees were hospitalized within the required

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related. It will be interesting, however, to see if the employees were hospitalized within the required 24-hour window after a work-related exposure, which is rare when an illness instead of an acute injury occurs.

Conclusion

"During these historic times, OSHA will continue working to protect workers, including those in high-risk industries," OSHA's regional administrator in Atlanta said in a statement. According to Megan Sweeney, an OSHA spokeswoman, OSHA has received more than 4,500 coronavirus-related complaints but this is the first citation issued by OSHA related to COVID-19. This suggests that this is just the beginning for COVID-19 related citations.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. 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, or any member of our Post-Pandemic Strategy Group Roster. You can also review our FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers.

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.

Related People

Nicholas S. Hulse
Associate
704.778.4183
Email

Service Focus

Workplace Safety and Catastrophe Management

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