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OSHA Guidance Regarding Employees who Test Positive

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The Occupational Safety and Health Administration (OSHA) has published [new guidance](#) for employers in the event an employee tests positive for COVID-19. The guidance applies to employers with more than 10 employees.

COVID-19 is a recordable illness under the Occupational Safety and Health Act and must be reported on the employer's injury and illness logs if: (1) it is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention; (2) the case is work-related; and (3) the case involves one or more of the general recording criteria required by the regulation. OSHA has issued this guidance to assist employers in satisfying the obligation to determine whether a case is work-related, recognizing the difficulty that may be posed by the transmission characteristics of this virus.

OSHA's guidance provides that the following factors will be considered in determining whether an employer has made a reasonable determination of work-relatedness:

- *The reasonableness of the employer's investigation:* When an employer learns of an employee's illness, the employer should: (1) ask how the employee believes he or she contracted COVID-19; (2) while respecting employee privacy, inquire about the employee's activities both at work and outside of work that may have led to the illness; and (3) review the employee's work environment for potential exposure.
- *The evidence available to the employer:* The employer should consider all reasonably available information in making its initial determination. If new information becomes available, the employer should use it to evaluate whether its initial determination was reasonable.
- *The evidence that COVID-19 was contracted at work:* The employer should consider all reasonably available evidence to determine whether an employee contracted COVID-19 at work. Factors that indicate the illness



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is likely work-related include: (i) if several cases develop among workers who work closely together; (ii) if an employee's illness is diagnosed shortly after lengthy close contact with a customer or coworker who has a confirmed case of COVID-19; (iii) if an employee's job duties include frequent close contact with the general public in an area with ongoing community transmission of COVID-19. Other factors may indicate that the illness is likely not work-related, for instance if the employee is the only worker in their vicinity to contract COVID-19, or if the employee has closely and frequently interacted with someone outside the workplace who has COVID-19.

If, after conducting a good faith inquiry, the employer cannot determine whether the COVID-19 case is more likely than not work-related, the employer is not required to record the illness. However in any event, the employer must respond appropriately to protect its workers, regardless of whether a particular case is ultimately determined to be work-related.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys J. Allen Holland, Jeffrey Loeb, Frank Gaeta, or David Glod.