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Question of the Day: COVID-Related OSHA Reporting Requirements

Legal Update

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Question

Do employers have any reporting requirements under OSHA with respect to COVID illnesses and death?

Answer

OSHA regulations require that employers report the death of any employee as a result of a work-related incident to OSHA **within eight hours**. See 29 C.F. R. §1904.39(a)(1). The fatality must be reported if it occurs within 30 days of a work-related incident. See 29 C.F. R. §1904.39(b)(6). The regulations similarly require that employers report the in-patient hospitalization of any employee (or an amputation or loss of an eye) as a result of a work-related incident **within 24 hours**. See 29 C.F. R. §1904.39(a)(2). The in-patient hospitalization (or amputation or loss of an eye) must be reported if it occurs within 24 hours of the work-related incident. See 29 C.F. R. §1904.39(b)(6).

The regulations state that a fatality, illness or injury is work-related “if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness.” See 29 C.F. R. §1904.5(a). The report must be made by way of (i) a phone call or in-person report to the OSHA area office nearest to the site of the incident; or (ii) by phone call to the OSHA toll-free central number (1-800-321-OSHA/1-800-321-6742).

OSHA has released a guidance reminding employers that these same requirements apply to COVID-19 illness, injuries and fatalities, and also has issued FAQs specific to COVID-19 which are updated from time to time.

The updated OSHA FAQs clarify a few additional points with respect to COVID-19 related reports. A “work-related incident” for purposes of COVID means an “exposure to SARS-CoV-2 in the workplace.” With respect to a COVID-related fatality then, the employer must report the fatality to OSHA within eight hours of “knowing both that the employee has died and that the cause of death was a work-related case of COVID-19.” With respect to a COVID-related in-patient hospitalization, the employer must report the hospitalization to OSHA within 24 hours of “knowing both

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that the employee has been in-patient hospitalized and that the reason for the hospitalization was a work-related case of COVID-19.”

The OSHA guidance indicates that once the employer becomes aware of an employee's COVID-19 illness, it may in most situations meet its obligation to determine whether the illness is work-related by:

- asking the employee how the employee believes the COVID-19 illness was contracted;
- while respecting the employee's privacy, discussing with the employee work and out-of-work activities that may have led to the COVID-19 illness; and
- reviewing the employee's work environment for potential SARS-CoV-2 exposure. This review should take into consideration any other instances of employees in that environment contracting COVID-19 illness.

OSHA recognizes that it may be difficult to determine whether a COVID-19 exposure is work related, and the agency has outlined examples of when a COVID-19 illness is likely, and not likely, to have been contracted at work. A COVID illness is likely work-related when, for instance:

- several cases develop among employees who work closely together and there is no alternative explanation;
- the illness is contracted shortly after lengthy, close exposure to a particular customer or another employee who has a confirmed case of COVID-19 and there is no alternative explanation; or
- the employee's job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation.

A COVID illness is likely not work-related when, for instance:

- the employee is the only employee to contract COVID-19 in the employee's vicinity and the employee's job duties do not include having frequent contact with the general public, regardless of the rate of community spread; or
- the employee, outside the workplace, closely and frequently associates with someone (e.g., a family member, significant other or close friend) who (i) has COVID-19; (ii) is not an employee; and (iii) exposes the employee during the period in which the individual is likely infectious.

If you have questions regarding OSHA reporting obligations or other obligations related to COVID-19, contact your Fredrikson Employment attorney.

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