

COVID-19

OSHA Recordkeeping &
Laws, Legal Updates and Trends

OSHA Recordkeeping: Part 1904

Who has to complete the OSHA Injury and Illness recordkeeping forms?

Many but not all employers. Exceptions are based on:

- Small employer exemption – 10 or fewer employees
- Low-hazard industry exemption



What forms must be completed?

- **OSHA Form 300** – Log of Work-Related Injuries & Illnesses
- **OSHA Form 301** – Injury & Illness Incident Report
- **OSHA Form 300A** – Summary of Work-Related Injuries & Illnesses

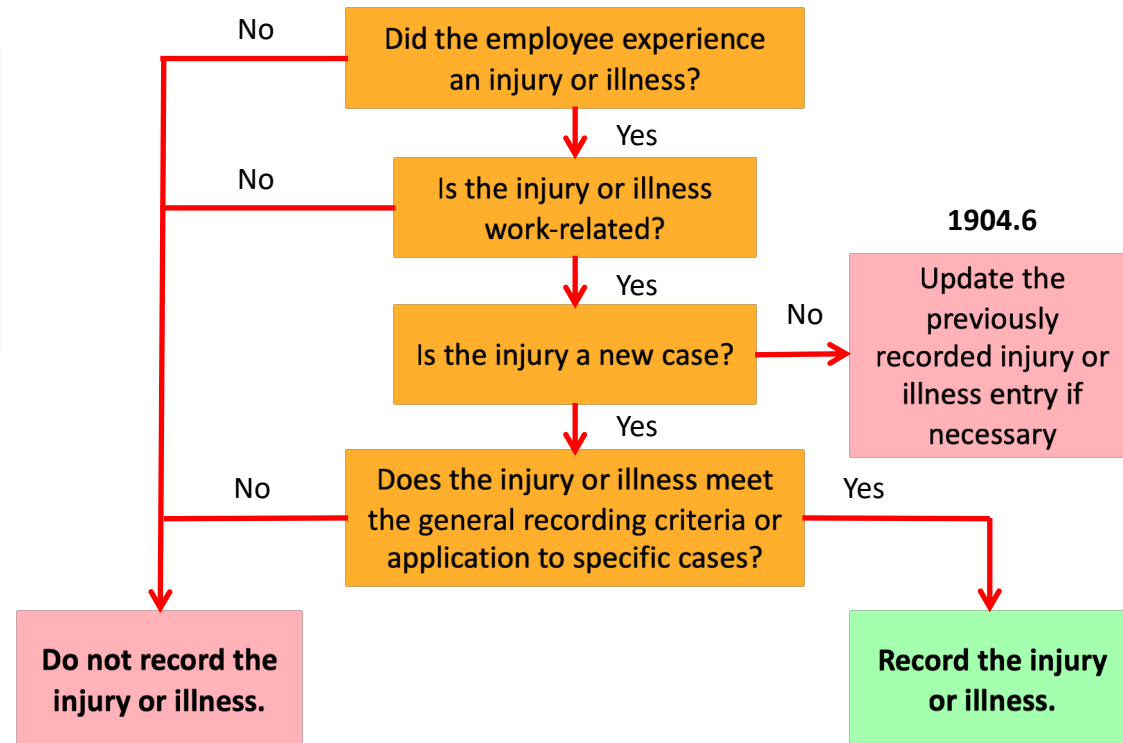
OSHA Recordkeeping: Part 1904

What cases need to be recorded?

- Work-Related Injuries and Illnesses that meet the general recording criteria (severity)

You must enter each recordable case within 7 days of learning the recordable case occurred

Implementation



Work-Related Cases

For OSHA Recordkeeping Purposes:

- Cases caused by events or exposures in the work environment
- Cases contributed to by events or exposures in the work environment
- Cases significantly aggravated by events or exposures in the work environment

OSHA defines work environment as:

“the establishment and other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work”

For a list of activities that are not work-related while in the work environment, see section [1904.5](#).

Severity Criteria

A work-related injury or illness must be recorded if it results in one or more of the following:

- Death
- Days away from work
- Restricted work or transfer to another job
- Medical treatment beyond first aid
- Loss of consciousness
 - Regardless of length of time
- A significant injury or illness diagnosed by a physician or other licensed health care provider

Severity Criteria

Medical treatment beyond first aid

Medical treatment – means the management and care of a patient to combat disease or disorder. For purposes of Part 1904, *medical treatment does not include*:

- Visits to the physician or other licensed health care professional solely for observation or counseling
- The conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes
- Any procedures that can be labeled first aid



Severity Criteria

For the purposes of Part 1904, First Aid means:

- Using non-prescription medication at non-prescription strength
- Administering tetanus immunizations
- Cleaning, flushing or soaking wounds on the surface of the skin
- Using wound coverings
- Using hot or cold therapy
- Using any non-rigid means of support
- Using temporary immobilization devices while transporting an accident victim
- Draining of fingernail or toenail to relieve pressure or drain fluid from a blister
- Using eye patches
- Removing foreign bodies from the eye using only irrigation or a cotton swab
- Removing splinters or foreign materials from areas other than the eye
- Using finger guards
- Using massages
 - Physical therapy or chiropractic treatment are considered Medical Treatment
- Drinking fluids to relieve heat stress



OSHA 301 Form

OSHA's Form 301 Injuries and Illnesses Incident Report

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purpose.

Year 20 ____
U.S. Department of Labor
Occupational Safety and Health Administration



Form approved OMB no. 1218-0176

This *Injury and Illness Incident Report* is one of the first forms you must fill out when a recordable work-related injury or illness has occurred. Together with the *Log of Work-Related Injuries and Illnesses* and the accompanying *Summary*, these forms help the employer and OSHA develop a picture of the extent and severity of work-related incidents.

Within 7 calendar days after you receive information that a recordable work-related injury or illness has occurred, you must fill out this form or an equivalent. Some state workers' compensation, insurance, or other reports may be acceptable substitutes. To be considered an equivalent form, any substitute must contain all the information asked for on this form.

According to Public Law 91-596 and 29 CFR 1904, OSHA's recordkeeping rule, you must keep this form on file for 5 years following the year to which it pertains.

If you need additional copies of this form, you may photocopy and use as many as you need.

Completed by _____

Title _____

Phone _____ Date _____

Information about the employee

- 1) Full name _____
- 2) Street _____
City _____ State _____ ZIP _____
- 3) Date of Birth ____ / ____ / ____
- 4) Date hired ____ / ____ / ____
- 5) Male
 Female

Information about the physician or other health care professional

- 6) Name of physician or other health care professional

- 7) If treatment was given away from the worksite, where was it given?
Facility _____
Street _____
City _____ State _____ ZIP _____
- 8) Was employee treated in an emergency room?
 Yes
 No
- 9) Was employee hospitalized overnight as an in-patient?
 Yes
 No

Information about the case

- 10) Case number from the Log _____ (Transfer the case number from the Log after you record the case)
- 11) Date of injury or illness _____
- 12) Time employee began work _____ AM/PM
- 13) Time of event _____ AM/PM Check if time cannot be determined
- 14) **What was the employee doing just before the incident occurred?** Describe the activity, as well as the tools, equipment, or material the employee was using. Be specific. Examples: "climbing a ladder while carrying roofing materials"; "spraying chlorine from hand sprayer"; "daily computer key-entry."
- 15) **What happened?** Tell us how the injury occurred. Examples: "When ladder slipped on wet floor, worker fell 20 feet"; "Worker was sprayed with chlorine when gasket broke during replacement"; "Worker developed soreness in wrist over time."
- 16) **What was the injury or illness?** Tell us the part of the body that was affected and how it was affected; be more specific than "hurt," "pain," or "sore." Examples: "strained back"; "chemical burn, hand"; "carpal tunnel syndrome."
- 17) **What object or substance directly harmed the employee?** Examples: "concrete floor"; "chlorine"; "radial arm saw." If this question does not apply to the incident, leave it blank.
- 18) **If the employee died, when did death occur?** Date of death ____ / ____ / ____

OSHA 300 Log

OSHA's Form 300 (Rev. 01/2004)

Log of Work-Related Injuries and Illnesses

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year 20____
U.S. Department of Labor
 Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

You must record information about every work-related death and about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries or illnesses that meet any of the specific recording criteria listed in 29 CFR Part 1904.8 through 1904.12. Feel free to use two lines for a single case if you need to. You must complete an Injury and Illness Incident Report (OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, call your local OSHA office for help.

Establishment Name _____
 City _____ State _____

Most severe outcome

Identify the person		Describe the case				Classify the case				Enter the number of days the injured or ill worker was:		Check the "injury" column or choose one type of illness:					
(A) Case no.	(B) Employee's name	(C) Job title (e.g., Welder)	(D) Date of injury or onset of illness	(E) Where the event occurred (e.g., Loading dock north end)	(F) Describe injury or illness, parts of the body affected, and object/substance that directly injured or made person ill (e.g., Second degree burns on right forearm from acetylene torch)	CHECK ONLY ONE box for each case based on the most serious outcome for that case:				Away from work	On job transfer or restriction	(M)					
						Death	Days away from work	Remained at work job transfer or restriction	Other recordable cases (J)	(K)	(L)	Injury	Skin disorder	Respiratory condition	Poisoning	Hearing Loss	All other illnesses
						(G)	(H)	(I)	(J)	days	days	1	2	3	4	5	6
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Month/day			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____ days	_____ days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Identify the employee unless there is a privacy issue

Page totals > Be sure to transfer these totals to the Summary page (300A) before you post it

Public reporting burden for this collection of information is estimated to average 14 minutes per response, including time to review the instructions, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have comments about these estimates or any other aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed forms to this office.

Injury	Skin disorder	Respiratory condition	Poisoning	Hearing Loss	All other illnesses
1	2	3	4	5	6

OSHA 300 Log Sample

Identify the person		Describe the case				Classify the case				Enter the number of days the injured or ill worker was:		Check the "Injury" column or choose one type of illness:					
(A) Case no.	(B) Employee's name	(C) Job title <small>(e.g., Welder)</small>	(D) Date of injury or onset of illness	(E) Where the event occurred <small>(e.g., Loading dock north end)</small>	(F) Describe injury or illness, parts of the body affected, and object/substance that directly injured or made person ill <small>(e.g., Second degree burns on right forearm from acetylene torch)</small>	CHECK ONLY ONE box for each case based on the most serious outcome for that case:				Away from work	On job transfer or restriction	(M)					
						Death	Days away from work	Job transfer or restriction	Other recordable cases	(K)	(L)	Injury	Skin disorder	Respiratory condition	Poisoning	Hearing Loss	All other illnesses
						(G)	(H)	(I)	(J)			1	2	3	4	5	6
R011115	Mike Doe	Mechanic	11/3 <small>Monday</small>	Garage/Grinder	Cut to right forearm using bench grinder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	days	days	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
R021115	Steve Doe	Mechanic	11/5 <small>Monday</small>	Garage/Tire Rack	Strained back while moving tire onto rack	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	days	10 days	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
R031115	Jane Doe	Bus Driver	11/9 <small>Monday</small>	Bus Yard	Sprained right ankle exiting vehicle	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6 days	9 days	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<small>Monday</small>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	days	days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Page totals >						0	1	1	1	6	19	3	0	0	0	0	0
Be sure to transfer these totals to the Summary page (300A) before you post it																	

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Recordkeeping: OSHA 300A

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restrictions	Total number of other recordable cases
<u>0</u> (G)	<u>1</u> (H)	<u>1</u> (I)	<u>1</u> (J)

Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
<u>6</u> (K)	<u>19</u> (L)

Injury and Illness Types

Total number of... (M)			
(1) Injuries	<u>3</u>	(4) Poisonings	<u>0</u>
(2) Skin disorders	<u>0</u>	(5) Hearing Loss	<u>0</u>
(3) Respiratory conditions	<u>0</u>	(6) All other illnesses	<u>0</u>

Post this Summary page from February 1 to April 30 of the year following the year covered by the form.

Electronically reporting OSHA 300A
March 2, 2021 is the deadline

<https://www.osha.gov/injuryreporting/>

OSHA 300 Log

Counting Days (Recordable injury/illness)

Count the number of calendar days the employee was on restricted work or was away from work

- Do not count the day on which the injury or illness occurred. Begin counting the day after the incident.
- Do not count the day the employee returns to full duty.
- Weekdays, weekend days, holidays, vacation days, or other days off are all included in the total number of days recorded until the day that the employee returns to full duty.

You can stop counting days of restricted work activity or days away from work once the total of either or a combination of both reaches 180 days.

Recordkeeping Retention

Must keep the OSHA records for five (5) years following the end of the calendar year that these records cover

- **OSHA 300** – OSHA Log
 - **OSHA 301** – Incident Report or Equivalent
 - **OSHA 300A** – Annual Summary
-
- Update the stored OSHA 300 to include newly discovered recordable injuries and illnesses and show any changes
 - You do not have to update the annual summary or OSHA 301 Incident Reports, but you may wish to do so

OSHA Recordkeeping: COVID-19

Under OSHA's Recordkeeping requirements, COVID-19 is a recordable illness, and thus employers are responsible for recording cases of COVID-19 if:

1. A confirmed case of COVID-19, as defined by the CDC
 - An individual with at least one respiratory specimen that tested positive for SARS-CoV-2, the virus that causes COVID-19
2. The case is work-related, as defined by OSHA
 - Defined on previous slide (Work-Related Cases)
3. The case meets the general recording criteria
 - Defined on previous slide (Severity Criteria)

OSHA Recordkeeping: COVID-19

Determining work-relatedness:

- Reasonableness of investigation into work-relatedness
 - Not expected to undertake extensive medical inquiries (lack of expertise and privacy issues)
 - In most cases, sufficient to ask:
 1. How he/she believes they contacted COVID-19
 2. With respect to privacy, discuss work and out-of-work activities that may have led to COVID-19
 3. Review employees work environment potential
- Evidence available to the employer
 - Determine work-relatedness based on information reasonably available.

OSHA Recordkeeping: COVID-19

Determining work-relatedness continued...

- Evidence a COVID-19 illness was contracted at work

Like work-related

- When several cases develop among workers who work closely together and there is no alternative explanation
- If it is contracted shortly after lengthy, close exposure to a particular customer or co-worker who has a confirmed case and there is no alternative explanation
- If his/her job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation

OSHA Recordkeeping: COVID-19

Determining work-relatedness continued...

- Evidence a COVID-19 illness was contracted at work

Like not work-related

- If he/she is the only worker to contract COVID-19 in their vicinity and their job duties do not include having frequent contact with the general public, regardless of the rate of community spread
- If he/she, outside of the workplace, closely and frequently associates someone who has COVID-19, is not a co-worker, and exposes the employee during the period in which the individual is likely infectious.

If, after a reasonable and good faith inquiry, the employer cannot determine that exposure in the workplace played a causal role, the employer does not need to record that COVID-19 illness.

OSHA Recordkeeping: COVID-19

- COVID-19 is a respiratory illness and should be coded as such on the OSHA 300 Form.
- Because this is an illness, if an employee voluntarily requests that his or her name not be entered on the log, the employer must comply as specified under 29 CFR 1904.29.

OSHA Reporting: COVID-19

Employers must report to OSHA:

- All work-related fatalities within 8 hours
 - Only fatalities occurring within 30 days of the work-related incident must be reported to OSHA.
- All work-related inpatient hospitalizations, all amputations and all losses of an eye within 24 hours

Report to OSHA by:

- 1-800-321-OSHA (6742)
- Calling your closest area office
- Using the online form

COVID-19: Laws, Legal Updates and Trends

Vaccines – What is Our Role

Can employers mandate their employees take the vaccine?

1. Worker's compensation considerations
2. Direct Threat considerations
3. Accommodation requirements for religion or medical issues

What about incentives?

1. Craft your policy carefully to spell out exactly how incentives may work
2. Include a sunset provision for your incentive program.
3. Be clear that even in the case of incentives, vaccination is voluntary

EEOC Guidance dated December 16, 2020

MASKS

- Guidance from March 2020 has not changed from a standpoint of impacting the transportation industry.
- Giant Eagle, while not yet decided, the litany of cases focus on ADA considerations and the requirement to provide reasonable modifications for customers and reasonable accommodations to employees when masks are required.
- The June 28, 2020 CDC mask guidance gives examples of what instances require an accommodation/modification, but based upon ADA guidance, that list may not be exhaustive
- **Note:** Ensure the public knows of the ability to request an accommodation

Alternatives to Masks

- CDC mentions face shields as a deterrent to COVID-19 transmission but confirms that face shields do not have sufficient data to determine if they are effective disease-control measures.
- Shields around the driver provide an employee alternative for drivers.
- For office employees, an accommodation may include single offices or teleworking.
- Teleworking policies for hourly employees require very strict guidelines to avoid wage and hour claims.

Passengers – Reasonable Modification?

While not on the general EEO websites, Motor Coach companies are subject to ADA requirements which includes a process to provide reasonable modifications to passengers who have issues with masks.

You should include the process to request a modification on your website.

If you are going to deny a modification to refuse a mask, you must use the specific reasons in the ADA to deny the request.

Employer Information Request

A.12. During the COVID-19 pandemic, may an employer request information from employees who work on-site, whether regularly or occasionally, who report feeling ill or who call in sick? (9/8/20; adapted from *Pandemic Preparedness Question 6*)

Due to the COVID-19 pandemic, at this time employers may ask employees who work on-site, whether regularly or occasionally, and report feeling ill or who call in sick, questions about their symptoms as part of workplace screening for COVID-19.

Now that FFCRA has expired, we are seeing more and more employees coming to work who have sickness or COVID related issues.

ADA Considerations – A New Approach

May you require COVID-19 testing for employees? **ONLY** if there is a genuine belief that an employee poses a direct threat to the health of others.

- Travel to restricted areas only under a government mandate (you must be consistent and not pick states that provide a particular concern)
- Symptoms suggested by the CDC
- Any tests must be reliable based upon FTA standards (in the case of whether an employer seeks to perform on-site testing)
- Antibody testing? The EEOC and CDC have both issued guidance that as of June 17, 2020, antibody tests may not be used to make employment decisions. However, they have indicated that this issue may be updated if the science changes.

What is a Hardship to Deny an Accommodation?

An employer may consider whether current circumstances create "significant difficulty" in acquiring or providing certain accommodations, considering the facts of the particular job and workplace.

For example, it may be significantly more difficult in this pandemic to conduct a needs assessment or to acquire certain items, and delivery may be impacted, particularly for employees who may be teleworking. Or, it may be significantly more difficult to provide employees with temporary assignments, to remove marginal functions, or to readily hire temporary workers for specialized positions. If a particular accommodation poses an undue hardship, employers and employees should work together to determine if there may be an alternative that could be provided that does not pose such problem.

Family Member Protection?

Question: Is an employee entitled to an accommodation under the ADA in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition? *(6/11/20)*

Answer: No

Although the ADA prohibits discrimination based on association with an individual with a disability, that protection is limited to disparate treatment or harassment. The ADA does not require an employer to accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom he or she is associated.

Travel Restrictions

- Can you limit business travel? – **Yes!**
- Can you limit personal travel? – **Likely not.**
 - But you can educate employees on the dangers and create policies that when traveling to any restricted area, they may need to use sick time upon their return.
- What if an employee gets COVID when traveling?

Abuse and Fraudulent COVID Claims

- The FBI has taken action to criminally prosecute employees who faked a positive covid test costing a manufacturer shutdown and cleaning and productivity costs totaling approximately \$175,000.00.
- Documentation of positivity is critical when you find that employees claim a positive test –especially in the context of payment for unworked hours
- Employers must still error on the side of safety in the face of allegations of positive tests.

Questions

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