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Is COVID-19 a Work-Related Illness?

A “Reasonable and Good Faith Inquiry” Checklist

On May 19, 2020, the United States Department of Labor’s Occupational Safety and Health Administration (“OSHA”) issued “Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19).” This guidance rescinded previous enforcement guidance altering the recordation requirement for COVID-related illness and injuries.

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

- (1) the case is confirmed, as defined by the CDC;
- (2) the case is work-related as defined by 29 C.F.R. §1904.5; and
- (3) the case involves one or more of the general recording criteria in 29 C.F.R. § 1904.7.

Given the degree of community transmission of COVID-19, the second element, whether a case is work-related, poses a particularly challenging question for employers. The new guidance requires that employers conduct a “reasonable and good faith inquiry” to determine whether an employee contracted COVID-19 at work. The checklist below, which is based on factors in the guidance, sets forth recommended questions to ask and actions to take to satisfy the employers’ requirement to make a reasonable and good faith inquiry:

- Ask the sick employee how she believes she contracted COVID-19.
- While respecting employee privacy, discuss whether she has frequent contact with someone (*e.g.* a family member, significant other, or close friend) who has COVID-19.
- While respecting employee privacy, discuss the employee’s work and out-of-work activities that may have led to contracting COVID-19.
- Review the employee’s work environment for potential COVID-19 exposure risks.
- Follow-up with co-workers of the infected employee to determine if they are experiencing any symptoms of COVID-19.



- Review records to determine whether the employee had close exposure to a particular coworker, customer, or client who has a confirmed case of COVID-19.
- Review the employee’s job duties and determine whether she had close exposure to the general public and whether there is ongoing community transmission of COVID-19.
- Assess whether there are any other alternative explanations for how and where the employee contracted COVID-19.

According to the guidance, if, after a reasonable and good faith inquiry, the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness.

Employers should consider hiring an independent third party to conduct the investigation and make a recommendation to the employer whether it is more likely than not that exposure in the workplace played a causal role with respect to the particular employee’s COVID-19. This will provide more credibility to the investigation and conclusion.

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