

LABOR & EMPLOYMENT ADVISORY

OSHA Reverses Course: Employers Must Now Make Determination as to the Work-Relatedness of COVID-19 Cases



Reversing an [earlier decision](#), which limited to only certain categories of employers the obligation to determine whether COVID-19 cases are work-related, OSHA announced on May 19, 2020, that all employers subject to the recordkeeping requirement now must make that determination. Under the prior guidance, only employers in industries such as healthcare, emergency response, and correctional institutions were required to investigate COVID-19 cases in order to determine if they are work-related. Under the [new guidance](#), all employers subject to OSHA's recordkeeping requirements must make that determination. Among the reasons for the change, according to OSHA, are the fact that outbreaks in many different industries have been found, the transmission and prevention of the virus are better understood, and employers are beginning to open up operations.

OSHA recognizes, however, that making a determination of work-relatedness will be difficult in many cases. Therefore, in order to determine whether employers are taking reasonable steps to make this determination, OSHA will consider the following:

- The reasonableness of the employer's investigation, given such factors as the employer's size, level of expertise in this area, and instances of other workers who have been exposed;
- The evidence available to the employer;
- The evidence that the transmission took place at work (e.g., if a group of employees contract the virus or if the employees work in a locality with ongoing transmission issues).



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If an employer cannot determine, after a reasonable investigation, that it is more likely than not that the exposure was work-related, it does not need to record the case on its injury and illness log. If it is more likely than not that the employee caught the virus at work, however, the case must be recorded. Employers should keep in mind, however, that a determination of work-relatedness does not necessarily mean that they violated any safety or health standards. It simply means that the COVID-19 transmission took place in the work environment.

Work-relatedness determinations can be difficult in the best of circumstances. In the midst of a pandemic where transmission sources are difficult to identify, they become harder still. OSHA recognizes that just because an employee has COVID-19, it does not automatically follow that the employee contracted the virus at work. Employers are encouraged to carefully review any such COVID-19 cases, look at all of the available facts, and exercise sound judgment as to whether an employee's exposure is truly work-related.