

# Employers Must Determine Whether Employee's COVID-19 Illness is Work-Related

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On May 26, 2020, OSHA's updated enforcement guidance states that OSHA will enforce the recordkeeping requirements of 29 CFR 1904 for employee COVID-19 illnesses for **all employers**.

This means that until further notice, employers must reasonably determine whether employees, who have COVID-19, contracted the illness at work. If the COVID-19 illness is deemed work-related, it is currently considered a recordable illness under OSHA. Recording a COVID-19 illness does not, of itself, mean that the employer has violated any OSHA standard. Also, as with existing recordkeeping requirements, employers with 10 or fewer employees and certain employers in low hazard industries have no recording obligations; they only need to report work-related COVID-19 illnesses that result in a fatality or an employee's in-patient hospitalization, amputation, or loss of an eye.

Below is what MHA Members need to know about OSHA's updated enforcement guidance.

## **REPORTING REQUIREMENTS RELATED TO COVID-19**

ALL hardware dealers with at least one employee need to **report work-related** COVID-19 illnesses that result in:

- An employee's fatality. Fatalities must be reported within 8 hours.
- An employee's in-patient hospitalization, amputation, or loss of an eye. These must be reported within 24 hours. *Note: OSHA defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment. Treatment in an Emergency Room is not considered in-patient hospitalization.*

A fatality or an in-patient hospitalization, amputation, or loss of an eye must be reported by the employer by either calling the nearest OSHA office, the 24-hour OSHA hotline (800-321-6742), or submitting a report online (<https://www.osha.gov/report.html>).

## **RECORDING REQUIREMENTS RELATED TO COVID-19**

Hardware dealers with more than 10 employees need to **record work-related** COVID-19 illnesses, as a respiratory illness, on the OSHA Form 300.

Under OSHA's revised enforcement for recordkeeping requirements, COVID-19 is a recordable illness and employers are responsible for recording cases of COVID-19 on the OSHA Form 300, if the case:

- is a confirmed case of COVID-19 (e.g. positive test result),
- is work-related; and
- results in medical treatment beyond first aid, restricted work, days away from work, loss of consciousness, or death.

In other words, an employee who tests positive for COVID-19 will likely miss work. If the employer determines that the employee's COVID-19 illness is work-related, then the case must be recorded as a respiratory illness on the OSHA Form 300.

## **HOW TO DETERMINE IF AN EMPLOYEE'S COVID-19 ILLNESS IS WORK-RELATED**

One challenge dealers may experience is determining if the COVID-19 illness is work-related. OSHA stated that employers should not be expected to undertake extensive medical inquiries, given employee privacy concerns and most employers' lack of expertise in this area. Therefore, dealers do not need to conduct an extensive investigation. Instead, dealers should gather factual information that is readily available.

When an employer learns of an employee's COVID-19 illness, OSHA stated that in most circumstances, it is sufficient for the employer to:

1. Ask the employee how they believe they contracted the COVID-19 illness.
2. While respecting employee privacy, discuss with the employee their work and out-of-work activities that may have led to the COVID-19 illness.
3. Review the employee's work environment for potential exposure. For example:
  - a. What is the employees' exposure level to the public?
  - b. Does the employee's workspace allow the employee to be socially distant from other individuals?
  - c. Have other employees contracted COVID-19?

OSHA states that certain types of evidence may weigh in favor of or against work-relatedness. For example:

### Evidence that a COVID-19 Illness was likely contracted at work.

- Several COVID-19 cases develop among workers who work closely together and there is no alternative explanation.
- The job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation.
- Contracted shortly after lengthy, close exposure to a particular customer or coworker who has a confirmed case of COVID-19 illness and there is no alternative explanation.

### Evidence that a COVID-19 illness was not likely contracted at work.

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

Remember to keep non-work related questions to a minimum and avoid extensive medical questions. Also remember that if additional information about the employee's COVID-19 illness later becomes available, then that information should also be taken into account and the investigation should be updated.

Please contact MHA for assistance if you have questions regarding OSHA's recordkeeping requirements during the COVID-19 pandemic.