

## Enforcement Guidance for Recording Cases of COVID-19

By: L. Stephen Bowers and Joshua Tumen

*Labor and Employment Alert*

4.15.20

The United States Department of Labor's Occupational Safety and Health Administration (OSHA) issued interim guidance to Compliance Safety and Health Officers (CSHOs) for enforcing existing rules with respect to recording occupational illnesses, including Coronavirus Disease 2019 (COVID-19). Under preexisting guidance, employers are generally responsible for recording cases of an illness (including COVID-19) if:

1. an employee experiences an illness (in the case of COVID-19, this requires a confirmation as defined by the Centers for Disease Control and Prevention (CDC));
2. it is "work related" as defined in the regulation; and
3. it meets certain specific generally applicable recording criteria.

Under the interim guidance, employers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement), and correctional institutions must continue to make work-relatedness determinations for COVID-19 cases. However, OSHA will not take enforcement action against other employers based on a failure to make the same work-relatedness determinations, except where:

1. there is objective evidence that a COVID-19 case may be work-related (e.g., cases developing among workers who work closely together); and
2. the evidence was reasonably available to the employer. Examples of reasonably available evidence include information given to the employer by employees, as well as information that an employer learns regarding its employees' health and safety in the ordinary course of managing its business and employees.

Where reporting is required, the following additional enforcement guidance is provided for CSHOs: "COVID-19 is a respiratory illness and should be coded as such on the OSHA Form 300. 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 20 CFR § 1904.29(b)(7)(vi)."

Although this guidance indicates that enforcement will be somewhat looser, employers should use this opportunity to review their recording and reporting obligations under OSHA requirements.

If you have questions or would like more information, please contact Stephen Bowers ([bowersss@whiteandwilliams.com](mailto:bowersss@whiteandwilliams.com); 215.864.6247), Joshua Tumen ([tumenj@whiteandwilliams.com](mailto:tumenj@whiteandwilliams.com); 212.714.3069) or another member of our Labor and Employment Group.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal

questions.