

## CLIENT ALERT

### OSHA Increases Scrutiny of COVID-19 Record-Keeping

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The Occupational Safety and Health Administration (OSHA) issued interim guidance for enforcing the recording of occupational illnesses requirements, specifically for cases of coronavirus (COVID-19). This guidance rescinds OSHA's earlier guidance providing for enforcement discretion on COVID-19 complaints arising outside of healthcare or emergency response employers. As of May 26, 2020, and until further notice, OSHA will be enforcing the recordkeeping requirements for employee COVID-19 illnesses for all employers.

COVID-19 is a potentially recordable illness, and, per this new guidance, "employers should be taking action to determine whether employee COVID-19 illnesses are work-related and thus recordable." Noting that cases of COVID-19 have been found in nearly all parts of the country, and not limited to workers in healthcare, emergency response, or correctional institutions, OSHA's new guidance makes it clear that employers are responsible for OSHA Form 300 recordkeeping requirements for COVID-19 employee cases, if:

- The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention (CDC);
- The case is work-related as defined by 29 CFR § 1904.5; and
- The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.

OSHA states that it will continue to exercise some enforcement discretion to assess employers' efforts in making work-related COVID-19 determinations, including considerations such as reasonableness of the employer's investigation, evidence available to the employer, and evidence that a COVID-19 illness was contracted at work. The guidance highlights that "it is important as a matter of worker health and safety, as well as public health, for an employer to examine COVID-19 cases among workers and respond appropriately to protect workers, regardless of whether a case is ultimately determined to be work-related."

Because the determination of whether exposure is work-related boils down to the totality of the circumstances, which is inherently prone to interpretation and enforcement difficulties, employers should work with their trained occupational health and safety professionals to develop and document appropriate protocols for making that determination from the outset and then train the relevant employees on implementing those protocols.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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