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OSHA's Recent COVID-19 Guidance Does Not Change Workplace Best Practices

On April 10, 2020, the Department of Labor issued interim enforcement guidance by the Occupational Safety and Health Administration (OSHA) concerning OSHA's recordkeeping requirement related to recording cases of COVID-19. As detailed in the guidance, OSHA considers COVID-19 a recordable illness, subject to certain recordkeeping requirements pursuant to existing regulations. However, given the continued spread of COVID-19 throughout the country, most employers have been temporarily exempted from determining whether a recorded case was "work-related," defined as an event or exposure in the work environment either causing or contributing to the resulting condition, or significantly aggravating a pre-existing injury or illness.

The "work-related" exemption relative to COVID-19 does not apply to employers of workers in the healthcare industry, first-responders, or correctional institutions. Furthermore, all employers must continue to make work-relatedness determinations where objective evidence is reasonably available to the employer, which suggests that a recorded case of COVID-19 could be work-related. As an example, such objective evidence may be the continued spread of COVID-19 cases amongst individuals working in close proximity to each other, without an alternative explanation.



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OSHA has explained its relaxed enforcement relative to work-related determinations of COVID-19 cases on its intent that employers, instead, will devote their focus and efforts to implementing good hygiene and otherwise mitigating COVID-19's effects in the workplace.

Employers, however, would be wise to not (mis)interpret OSHA's recent guidance as somehow precluding or minimizing the possibility of a work-related determination and potentially resulting liability. This could not only result in action by OSHA, but also common law wrongful death and workers compensation cases we are starting to see related to COVID-19. If objective evidence supports an employer's failure to take recommended, timely measures to help prevent the spread of the virus in the workplace, such an employer faces real, substantial legal exposure in the current climate.

If you have any questions regarding OSHA's guidance or labor and employment issues, please do not hesitate to contact Corey Biller or your Neal Gerber Eisenberg attorney.

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