

# Opening the Doors: Return-to-Workplace Considerations During COVID-19

## OSHA Reinstates Employers' Obligations to Record Work-Related COVID-19 Cases

May 21, 2020

Employment / Environmental

---

On May 19, OSHA [issued](#) updated guidance reinstating employers' obligations to record work-related COVID-19 cases. The guidance takes effect May 26. OSHA had previously suspended this obligation for most employers [in an April 10 enforcement discretion document](#), but advocates for both employers and employees have recently pressed for more robust guidance from OSHA related to safe operation during the COVID-19 pandemic. As employers take steps to reopen work sites, they should develop plans for ensuring compliance with OSHA's COVID-19 recording requirements.

Employers' basic obligations on this front are twofold. *First*, if an employee in the workplace is confirmed to have contracted COVID-19 and the employer determines that the illness was more likely than not caused by a work-related exposure, the employer must record the illness in its OSHA logs. OSHA acknowledges that determining whether a COVID-19 case is work-related may be "difficult," but indicates it will not bring enforcement actions so long as employers conduct a "reasonable and good faith inquiry" to make such a determination. OSHA also provides guidance as to how employers can assess whether a COVID-19 case is work-related, and notes that employers need not "undertake extensive medical inquiries."

*Second*, OSHA's regulations require employers to report any COVID-19 employee fatalities within 8 hours, if they occur within 30 days of a work-related incident, and report any COVID-19-related in-patient hospitalizations of employees (and certain other adverse outcomes), if they occur within 24 hours of a work-related incident.

Employers should ensure that they have appropriate policies and procedures in place for complying with these obligations. This should be a particular focus for businesses that may not already have procedures in place to record and report to OSHA, such as those whose employees primarily work in an office environment. Employers should also heed OSHA's caution 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." Covington has provided further guidance on handling known cases of COVID-19 exposure in its alert addressing [Return-to-Workplace Considerations During COVID-19: General Workplace Safety Precautions](#). Employers can expect OSHA to issue more guidance in this area, and should carefully track updates.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Employment and Environmental practices:

**Lindsay Burke**

+1 202 662 5859

[lburke@cov.com](mailto:lburke@cov.com)

**Thomas Brugato**

+1 202 662 5515

[tbrugato@cov.com](mailto:tbrugato@cov.com)

**Carolyn Rashby**

+1 415 591 7095

[crashby@cov.com](mailto:crashby@cov.com)

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to [unsubscribe@cov.com](mailto:unsubscribe@cov.com) if you do not wish to receive future emails or electronic alerts.