

OSHA Revises COVID-19 Guidance....Again

Labor & Employment Law Update

By Matthew Horn on May 22, 2020

Previously, OSHA issued guidance indicating that most employers only had to record or report confirmed COVID-19 cases when provided with *objective evidence* that an employee contracted COVID-19 at work. In practice, this put the burden on employees to submit evidence to employers establishing that their COVID-19 cases were contracted at work.

OSHA recently issued revised guidance on this issue, which goes into effect on May 26, 2020. Under the revised guidance, OSHA puts the burden on the employer to make a “reasonable determination” as to whether a confirmed COVID-19 case was contracted at work. In order to make that determination, OSHA suggests that employers:

- 1) Question the employee as to how he/she believes he/she contracted COVID-19;
- 2) Discuss with the employee his/her out-of-work activities that may have resulted in exposure; and
- 3) Review the employee’s work environment for potential COVID-19 exposure.

If, after taking those steps, the only logical explanation is that the employee contracted COVID-19 at work, then the case should be recorded or reported to OSHA, as appropriate.

Moving forward, employers should prepare a questionnaire to be filled out by employees with confirmed COVID-19 cases, inquiring as to the topics OSHA has identified in its guidance—much like an accident report. Employers can use those questionnaires to guide them in their OSHA-related decision making process, as well as if/when a workers’ compensation or civil suit is filed.