



Casualty Risk Consulting

## Risk Bulletin: OSHA guidance for recording COVID-19 cases among your workers

**How do you deal with an employee who has COVID-19? Traditionally we don't expect many communicable illnesses to be work-related. As we can all agree, COVID-19 has made reality more complex.**

In April OSHA released initial enforcement guidelines for recording cases of COVID-19, which were broad with little detail. On May 19, OSHA issued revised enforcement guidelines for recording cases of COVID-19 that are more specific and more enforceable. Summarizing the key points will help you prepare to manage a potential COVID case.

### OSHA reporting requirements

First, make sure to periodically check for updates on [OSHA's COVID-19 web page](#). The [CDC has guidance](#) for many specific work locations and activities as well. These will provide direction on preventing COVID-19 cases in your workplace.

OSHA May 19th Guidelines now identify a case of COVID-19 recordable if:

1. The case is confirmed by a positive test, according to CDC criteria; AND
2. The case is work-related by OSHA Standards 1904.5 and 1904.7

The difficult part will be to determine if it is "reasonable" to believe the worker contracted the disease at work versus from off-work exposure. OSHA enforcement give some direction in this area for the employer.

- Ask employee how they may have gotten the disease at work.
- Ask about other potential exposures (requires sensitivity of employee's privacy).
- Consider potential workplace exposures.

Part of managing the possible exposure would include monitoring the prevalence of COVID-19 in the communities where business operations are located.

OSHA expects the employer to make a "reasonable" decision if the case is work-related, while also acknowledging that there is not a clear metric to make such a determination. The employer will need to monitor and document the overall status of COVID-19 in the workplace and the community served, as well as keep adequate records of employer efforts, to evaluate if an illness is work-related or not. OSHA provides examples of the type of evidence to track, such as:

- Instances of multiple cases of COVID-19 among individuals who work together.
- Whether the affected employee has had close exposure to a co-worker or customer who has tested positive.
- If the worker has frequent, close contact with the public in an area with community transmission.

It is less likely that the illness is work related if:

- There is a single case in the workplace and the worker's job duties do not include regular contact with the public.
- The worker has close, or frequent contact with someone (family, close friend) outside the workplace, who has had COVID and is potentially infectious.

### Monitoring and recording requirements

Part of managing the possible exposure would include monitoring the prevalence of COVID-19 in the communities where business operations are located. This is best done by working with local public health departments for recent and accurate figures. OSHA identified community transmission as a consideration but not how to consider that effect.

A rolling average of 3- or 5- days is a time sensitive indicator of increasing or decreasing trends. A 14-day rolling average is a stronger indicator of improving or deteriorating infection rates. As an example, one state health department has identified 50 or fewer cases per 100,000 on the 14-day rolling average as a key metric for full opening of businesses. Measurements of positivity testing rates may also be useful; the lower the positive results

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the better. Again, trends within an area will be more meaningful than broad comparisons due to differing methodology and testing criteria from location to location.

This data will need to be documented to justify decisions for recording any potential COVID-19 cases among your workforce. This information can also help decide the appropriate precautions for your workplace.

### **Confirmed infection of an employee, now what?**

If you should have an employee who tests positive for COVID 19 you must think about how to protect your workforce. If there are others who work closely with that individual, you will want to tell them they may have been exposed without divulging personal information of the infected employee. Work with human resource specialists and employment legal counsel to draft the protocol for doing so. In some locations it may also be required for the infected employee to contact the local public health department.

If you have an employee who believes they contracted COVID-19 at work, they may also want to file a workers' compensation claim. Workers Compensation is separate from OSHA. Every employer should talk about Workers Compensation treatment of COVID-19 with their employment legal counsel, human resource professionals, and employees.

Determining the reasonableness of a workplace transmission may involve sensitive discussions regarding the employee's health and personal life, so management should determine now who should interview the worker and any others to be involved – don't wait for your first case to make these decisions. We also recommend speaking about the possibility of future claims with the adjusters who will handle them. Given that more than 15 states have created different sets of presumptions of compensability, there is no way to generalize whether a state will accept the claim as compensable.

Finally, make sure that you use the information about COVID-19 in your community to keep all you employees safe. While OSHA and CDC have extensive advice on reducing the chance of exposure, local public health departments are excellent resources in disseminating what's required locally with the broader perspective.

At AXA XL Risk Consulting we know that navigating the regulations, guidance, and state of the pandemic is not easy. If your organization needs assistance with evaluating methods to comply with social distancing, contract tracing, disinfecting, infection rate monitoring, and many others please let us know. And continue to check the [AXA XL Covid-19 site](#) and [Fast Fast Forward](#) site for more thought leadership communication.

### **Resources**

[coronavirus.jhu.edu/us-map](https://coronavirus.jhu.edu/us-map)

[www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19](https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19)

[www.cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)

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