

COVID-19 Employer Requirements for Reporting & Recordkeeping Under California OSHA

Federal and state occupational safety and health regulations require employers to record and report certain work-related injuries and serious illnesses, including work-related fatalities and in-patient hospitalizations. While Cal/OSHA has stated that the common cold or flu are exempt from reporting and recording requirements, even if the employee became ill at work, **this exemption does *not* apply to COVID-19**. Consequently, employers should actively monitor instances of COVID-19 in their workforces and ensure they are complying with the requirements discussed below.

To comply with Cal/OSHA recordkeeping and reporting regulations, covered employers should take two preliminary steps: (i) actively identify instances of COVID-19 infection among employees, and; (ii) determine whether the infection was work-related.¹

If the employer determines that an employee who has COVID-19 was exposed in the workplace, it must maintain record of the illness on its Cal/OSHA Form 300. Notably, employers must record serious work-related illnesses even where the employer had *no* control over the exposure.

Further, all employers—even those otherwise relieved of Cal/OSHA's recordkeeping requirements²—must report work-related fatalities and serious illnesses to Cal/OSHA immediately, or no later than 8 hours after the employer knew, or with diligent inquiry should have known, about the serious injury or illness.

Importantly, under the new Cal/OSHA injury/illness reporting requirements effective January 1, 2020, the 24-hour minimum time requirement for hospitalizations was removed. Now, hospitalization for any duration of time must be reported, excluding hospitalizations only for medical observation or diagnostic testing.

If the employer is unsure as to whether the employee was exposed to COVID-19 in the workplace, the employer must evaluate the employee's work duties and environment to decide if one or more events or exposures in the work environment caused the illness. It will be challenging to figure out whether exposure occurred at work, especially in low-risk workplaces and



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workplaces with no recorded instances of COVID-19. Practically speaking, this means that an employer may not be required to report any instances of COVID-19 in its workforce if there is no other evidence of exposure to COVID-19 in the workplace.

An employer may submit mandatory reports to Cal/OSHA by telephone or email 24 hours a day, 7 days a week.

¹ An employer must consider an injury or illness to be "work-related" if exposure in the work environment either caused or contributed to the resulting condition

²Certain employers are excluded from Cal/OSHA's recordkeeping requirements including employers with less than 10 employees and employers in designated "low-risk" industries including, but not limited to, retail, law, and financial services

Takeaway

Employers should carefully monitor their workplaces for instances of COVID-19 in employees. If an employer determines that the employee was exposed to COVID-19 in the workplace, it must be sure to comply with aforementioned requirements as failing to comply may lead to citations and substantial monetary penalties. Additionally, employers should be mindful that reporting work-related fatalities and illnesses could trigger a site inspection by Cal/OSHA.

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