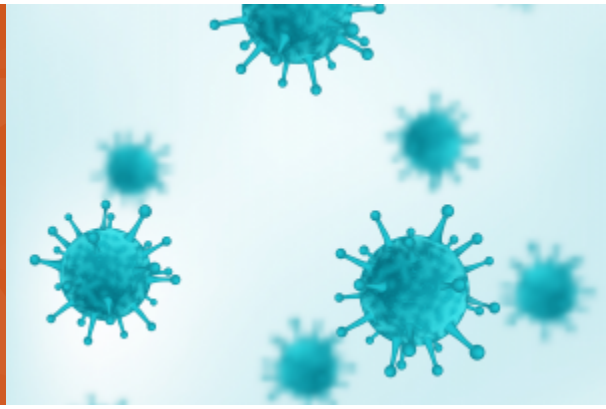
COVID-19 Alert: Updated Response Plan

OSHA Updated Response Plan and Updated Reporting Requirements for COVID-19

May 28, 2020



The Occupational Safety and Health Administration (OSHA) issued updated guidance including an Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19) (the "Updated Response Plan"), and updated reporting requirements for employers to report work-related cases of COVID-19. As employers begin re-opening and bring employees back to work (and for those essential businesses continuing to operate), employers should keep these updates from OSHA in mind in forming their COVID-19 response plans.

OSHA Updated Response Plan

The Updated Response Plan is meant to instruct Area Offices and compliance safety and health officers (CSHOs) on handling COVID-19-related complaints, referrals and severe illness reports.

For Area Offices and CSHOs located in areas experiencing either a sustained elevated transmission or a resurgence of COVID-19, the Updated Response Plan instructs these offices to increase inspections and prioritize on-site inspections to high-risk workplaces, unless on-site inspection is not possible. "High-risk workplaces" include hospitals or healthcare providers treating COVID-19 patients, and workplaces with high numbers of complaints or known COVID-19 cases. In cases where on-site inspection is not possible, a rapid response investigation will be initiated instead.

For those Area Offices and CSHOs located in other areas where the spread of COVID-19 has significantly decreased, Area Offices should continue to abide by the OSHA guidance issued previously, in the OSHA Field Operation Manual (FOM), CPL 02-00-164, Chapter 2, though COVID-19 cases will continue to be prioritized.

Updated Reporting Requirements

OSHA also issued a revision to its previous enforcement policy for recording cases of COVID-19. Under OSHA's recordkeeping requirements, COVID-19 is considered a recordable illness, and employers are responsible for recording cases of COVID-19 under the following circumstances:

1. The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control (CDC);
2. The case is "work-related" as defined by OSHA regulation, 29 CFR § 1904.5; and
3. The case involves one or more of the general recording criteria in OSHA regulation, 29 CFR § 1904.7.

OSHA clarified that the recording and reporting of a COVID-19 case alone does not mean an employer has violated OSHA and will be subject to a fine. Instead, OSHA recognizes that it will likely be difficult to ascertain whether an exposure was caused in the workplace or not. As such, employers showing a good faith effort to protect its workplace (through efforts to comply with OSHA COVID-19 Guidance) will be granted discretion. The new guidance provides criteria that CSHOs should use in determining whether an employer made a reasonable determination of

work-relatedness and complied with the reporting requirements, including the reasonableness of the employer's investigation, and the evidence available.

Morse is focused on assisting our clients through these unprecedented and challenging times. Please contact the Firm should you have questions concerning this subject, or any other COVID-19 response matters.

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