

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
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Douglas L. Parker, Chief

April 8, 2020

VIA Email

Dear Messrs. Bernacchi, Breslin, et al.

Thank you for your March 23, 2020 letter requesting clarification from Cal/OSHA regarding recording and reporting requirements for COVID-19 related illnesses.

First, regarding the recording of confirmed COVID-19 cases, you urge Cal/OSHA to utilize the Federal OSHA guidance on recording these cases. Cal/OSHA requirements are consistent with the Federal OSHA guidance referenced in your letter, so your members should be able to follow federal guidance without concern. If you believe there are substantive differences between Federal OSHA and Cal/OSHA guidance, please let us know what you think they are and we can try to clarify them with you.

Regarding the request to clarify where and when COVID-19 related illnesses become reportable, Title 8 Section 330 of Cal/OSHA's regulations require the reporting of a serious injury, illness or death "occurring in a place of employment or in connection with any employment." Under this regulation and precedents of the Occupational Safety and Health Appeals Board (OSHAB), if a worker becomes ill while at work, and is admitted as in-patient at a hospital (regardless of the duration of the hospitalization), the illness "occur[ed] in a place of employment" and so the employer must report this illness to the nearest Cal/OSHA office immediately, but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the serious illness.

According to OSHAB precedent, employers must report all serious injuries, illnesses or deaths occurring at work without making a determination about work relatedness. For some diseases, such as COVID-19, associated respiratory symptoms such as difficulty breathing can be caused by a variety of occupational exposures, so it is important for employers to report these cases to Cal/OSHA and let the Division make the preliminary determination of work-relatedness.

Reportable illnesses are not limited to instances when the employee becomes ill at work, however. Section 330 also requires reporting of serious illnesses contracted "in connection with any employment," which can include illnesses contracted in connection with work but with symptoms that commence outside of work. An employer should report a serious illness if there is cause to believe the illness may be work related, regardless of whether the onset of symptoms occurred at work. It is important to remember that reporting a serious illness is not an admission that the illness is work related, nor is it an admission of responsibility.

For COVID-19, evidence suggesting transmission at or during work would make a serious illness reportable. Examples of evidence include multiple suspected or confirmed cases among workers who work together or congregate at a job site, or a diagnosed worker who has regular, work-related

close contact with the general public. Fact patterns like these would trigger the “connection with any employment” condition for reporting purposes, allowing Cal/OSHA to then make a preliminary evaluation of work relatedness.

In the attachment to your letter you ask several questions requesting clarification on specific provisions of some of Cal/OSHA’s standards.

Making reference to a Cal/OSHA publication (Brief Guide to Recordkeeping Requirements), you quote “Respiratory conditions are illnesses associated with breathing hazardous biological agents, chemicals, dusts, gases, vapors or fumes at work.” With regard to this, you ask the following:

1. *Does Cal/OSHA consider Coronavirus (COVID-19) a biological agent? Common definitions suggest such agents are “...used purposefully as a weapon or bioweapon”. Coronavirus does not appear to fit in the category identifying respiratory conditions.*

Yes, Cal/OSHA, as well as Federal OSHA, define biological agents to include bacteria, **viruses**, fungi, other microorganisms and their associated toxins. The definition does not require the agent to be in use as a weapon. These agents have the ability to adversely affect human health in a variety of ways, ranging from relatively mild, allergic reactions to serious medical conditions—even death. More information on the Federal OSHA definition is here:

<https://www.osha.gov/SLTC/biologicalagents/index.html>. They list COVID-19.

2. *Under the same section noted above is a section “All other illnesses”, the examples mentioned do not include influenza or influenza-type viruses.*
3. *Please clarify under what circumstances Cal/OSHA would consider COVID-19 as a recordable case.*

Cal/OSHA agrees with and follows the Federal OSHA guidance on the recording of confirmed COVID-19 cases. Cal/OSHA considers COVID-19 a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all of the following are met:

1. The case is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);
 2. The case is work-related, as defined by Title 8 CCR section 14300.5; and
 3. The case involves one or more of the general recording criteria set forth in Title 8 CCR section 14300.7 (e.g. medical treatment beyond first-aid, days away from work).
4. *If a worker is directed to self-isolate or is quarantined, would that be considered time away from work for recording purposes?*

In accordance with the Federal OSHA guidance on recording, the first condition for the case to be recordable is that the case is a confirmed COVID-19 case. Time away from work taken by a worker to self-isolate or be quarantined without having a confirmed COVID-19 illness is not considered time away from work for recording purposes.

5. *Posted to the Cal/OSHA website is a document “Cal/OSHA Guidance on Requirements to Protect Workers from Coronavirus” which states “Workplace safety and health regulations in California require employers to protect workers exposed to airborne infectious diseases such a coronavirus.” It goes on to state: “Cal/OSHA’s Aerosol Transmissible Diseases (ATD)*

standard (5199) requires protection for employees at health care facilities, and other services and operations. I note that although a variety of facilities are mentioned such as health care, laboratories; public health services; correctional facilities, police services; etc. there is no mention of construction-related workplaces. Does Cal/OSHA consider construction exempt from Title 8, Section 5199?

Title 8 CCR Section 5199, Aerosol Transmissible Diseases (ATD), sets forth in subsection (a)(1) the facilities, service categories, or operations to which this standard applies. With one potential exception, mentioned below, construction-related workplaces do not fall under the scope of this standard. The operations that may (but not necessarily) fall under the construction category are listed in subparagraph (a)(1)(I) of section 5199:

(I) Maintenance, renovation, service, or repair operations involving air handling systems or equipment or building areas that may reasonably be anticipated to be contaminated with aerosol transmissible pathogens (ATPs) or ATPs-L, including:

1. Areas in which Airborne Infectious Disease (AirID) cases and suspected cases are treated or housed.
2. Air handling systems that serve airborne infection isolation rooms or areas (AIIRs).
3. Equipment such as laboratory hoods, biosafety cabinets, and ventilation systems that are used to contain infectious aerosols.

Section 5199(a) also allows the Chief to designate other industries as subject to the ATD Standard. There are no plans to designate construction.

6. *Under Title 8, Section 14300.7 “General Recording Criteria”, subpart (a), it states “You must also consider a case to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional.”*
7. *We contend that although a worker might be diagnosed with COVID-19, it is virtually impossible for a physician or other licensed health care professional to definitively determine that the exposure was solely limited to the job site.*

Please refer to Title 8 CCR Section 14300.5, Determination of Work-Relatedness, and in particular Section (b)(2)(H), for the specific provisions related to your statement above. It provides that infectious diseases are reportable if the employee is infected at work. The provision you are citing from Section 14300.7(a), “General Recording Criteria,” which in turn refers to subsection (b)(7), concerns the definition of a “significant” illness, not the definition of work relatedness.

We understand these answers, when applied to specific facts, will not always give employers the guidance they need. I encourage employers with specific questions about reporting and recording to contact our Consultation Branch, which has dedicated staff to answer employers’ questions about COVID-19 by phone. Area office telephone numbers can be found here:

https://www.dir.ca.gov/dosh/consultation_offices.html.

I also stress that all employers should be taking affirmative steps to protect workers from COVID-19, and adopting preventive measures in their health and safety plans. This includes taking affirmative steps whenever there is an indication of employee exposure, regardless of whether it is a recordable or reportable illness. Please see the Department of Industrial Relations website, dir.ca.gov, for more information.

Sincerely,

Mr. Bernacchi et al
April 8, 2020
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A handwritten signature in black ink, appearing to read 'DLP', with a long horizontal flourish extending to the right.

Douglas L. Parker
Chief, Cal/OSHA