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OSHA Revises Guidance for Recording COVID-19 Cases and Outlines New Enforcement Response and Inspection Priorities

Insight — May 20, 2020

OSHA issued two important memorandums on May 19, 2020 revising its enforcement guidance related to COVID-19.

Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19)

This memorandum revises OSHA's position on recording COVID-19 cases in the workplace and rescinds OSHA's earlier guidance that largely limited enforcement of recordkeeping requirements for COVID-19 to the healthcare industry, emergency response organizations, and correctional institutions. Effective May 26, all employers subject to the recordkeeping requirements must record confirmed cases of COVID if the illness otherwise meets the recording requirements. OSHA's memo acknowledges the difficulty in determining work-relatedness for COVID-19 cases and stated that it will consider the following when determining whether an employer has complied:

- The reasonableness of the employer's investigation into work-relatedness.
- The evidence available to the employer.
- The evidence that a COVID-19 illness was contracted at work.

The memo provides additional detail and examples regarding when COVID-19 is likely (or not) work-related. If, after a "reasonable and good faith inquiry," the employer cannot determine whether it is more likely than not that the case is work-related, the employer is not required to record the illness.

Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)

This memorandum revises OSHA's prior inspection guidance that prioritized fatal and imminent danger exposures to COVID-19, particularly in healthcare organizations and for first responders, and significantly limited inspection scope in other cases. The memo states, "OSHA will return to the inspection planning policy that OSHA relied on prior to the start of the COVID-19 health crises" for areas where the spread of COVID-

19 has “significantly decreased,” but it will continue to prioritize COVID-19 cases and use phone and fax investigations when necessary. For areas where COVID-19 has sustained or increased, area directors will exercise discretion to continue to prioritize COVID-19 fatalities and imminent danger exposures and limit the scope of other inspections based on available resources.

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