OSHA Guidance on Recording Requirements for COVID-19

On May 19, 2020 the Department of Labor's Occupational Safety and Health Administration (OSHA) updated its guidance from April 13, 2020 recording cases of COVID-19 in their 300 Logs for reporting occupational injuries and illnesses. This new guidance takes effect May 26, 2020 and provides information for what surveyors will utilize to assess an employer's efforts to determine if the case was work-related. This includes all long term care providers including assisted living, skilled nursing facilities, and providers caring for individuals with intellectual and developmental disabilities.

In the memo, OSHA restated that COVID-19 is a recordable illness and employers are responsible for recording cases of COVID-19 if:

1. the case is a tested-positive confirmed case of COVID-19, as defined by Centers for Disease Control and Prevention (CDC);
2. the case is "work-related," which is defined as an event or exposure that either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness (this includes COVID-19 acquired from a co-worker or resident); and
3. the case involves one or more of the following:
    - death
    - days away from work
    - restricted work or transfer to another job
    - medical treatment beyond first aid
    - loss of consciousness
    - a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

    Because of the difficulty with determining work-relatedness, OSHA is exercising enforcement discretion to assess employers' efforts in making work-related determinations. In determining whether an employer has complied with this obligation and made a reasonable determination of work-relatedness, Compliance Safety and Health Officers are advised to consider the following:

    - 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.

If, after the reasonable and good faith inquiry described above, the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness.

NOTE: For COVID-19 infections, “work-related" is very difficult to determine, as mentioned above, since it has a long incubation period (i.e., 2-14 days) and is so easily transmissible in the community between individuals who are asymptomatic. Often healthcare workers’ COVID-19 infections are attributable to community spread rather than “work-related”. Providers need to do their best in determining “work-related” cases but may want to err on the side of over reporting to OHSA even though it may not be “worked-related”. Providers should consider contacting their legal counsel on this issue.

Employers of workers in the healthcare industry must continue to make work-relatedness determinations pursuant to 29 CFR § 1904. Healthcare employers will need to take a closer look at confirmed cases of COVID-19 in employees and note that there may be non-cluster scenarios where they must record the illness.