

COVID-19 and OSHA Recordable Event

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Jef Fagan, NECA General Counsel

Mike Johnston, Executive Director, Standards and Safety, NECA

Wes Wheeler, Director, Safety, NECA

Summary of the OSHA Revised Guidance

We have been tracking the developments at the Occupational Health and Safety Administration (OSHA) related to COVID-19 being a recordable incident on the jobsite. The intent of the current memorandum requires industries where workers are in direct contact with COVID-19, such as healthcare or first responders, to treat employees who contract COVID-19 on the jobsite as a recordable incident. On May 19th, OSHA issued interim guidance to replace the current OSHA memorandum on the recordability issue that will take effect on May 26th and stay in place during the “current COVID-19 public health crisis” and until rescinded.

The Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 can be found here:

[OSHA Guidance Effective May 26, 2020](#)

In essence, OSHA certifies COVID-19 is a recordable illness in all industries if the standard criteria are present¹, but the agency now formally acknowledges “in many instances it remains difficult to determine whether a COVID-19 illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace.” With the interim guidance issued today, OSHA is exercising its enforcement discretion by adopting considerations to be used by compliance officers to assess employer’s efforts in making work-related determinations on COVID-19.

Those interim considerations are set forth in detail in [the Guidance](#) and involve the following assessments:

- The reasonableness of the employer’s investigation into work-relatedness;
- The evidence available to the employer; and
- The evidence that a COVID-19 illness was contracted at work
 - ◆ There are several presumptions in this category that are important to note, such as the use of the phrase “no alternative explanation”.

The interim guidance also makes several additional important points:

- Recording a COVID-19 illness does not necessarily mean a violation of any OSHA standard
- “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.**”

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

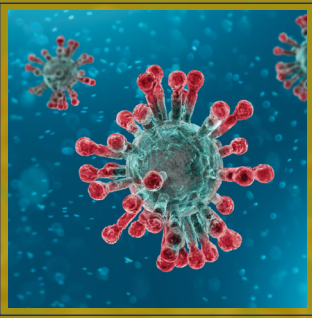


3 Bethesda Metro Center
Suite 1100

Bethesda, MD 20814

301-657-3110 • www.necanet.org

published 5/20/2020



Recommendation and Best Practices

In order to comply with the OSHA recordkeeping and recordation obligations related to COVID-19, employers should consult this revised interim guidance for direction on how to conduct a reasonable and good faith investigation to assess whether or not a COVID-19 illness is recordable.

NECA is working on specific guidance on how to best implement the newly revised directive.

Stay safe.

This material is for informational purposes only. The material is general and is not intended to be legal advice. It should not be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, applicable CBAs, prime contracts, subcontracts, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.



3 Bethesda Metro Center
Suite 1100

Bethesda, MD 20814

301-657-3110 • www.necanet.org