

## What OSHA's New Guidance Means for the Construction Industry

During the rise of the COVID-19 pandemic in the United States, OSHA provided standards for recording workplace exposures to COVID-19. These standards broadly require employers to record COVID-19 illnesses of its employees if three conditions are met:

1. it is a "confirmed" case of COVID-19;
2. the case is "work-related;" and
3. it meets one or more general recording criteria (e.g., hospitalization, sick days).

In short, OSHA was not treating COVID-19 like a common cold or the flu. Instead, employers in the construction industry may have needed to include almost any confirmed case of COVID-19 on its recordable log. In response to these requirements and the resulting confusion, construction industry groups appealed to OSHA for more guidance.

On April 10, 2020, OSHA provided an [Enforcement Memo](#) that clarifies and loosens the requirements for employers to have to record COVID-19 infections. John Ho of Cozen O'Connor's Labor and Employment group issued a [blog post](#) explaining OSHA's new guidance and providing helpful tips for employers who may still need to record COVID-19 infections.

### Recordable requirements loosened for construction

OSHA now treats certain industries differently in terms of requirements for employers. Specifically, employers of workers in the health care industry, emergency response organizations (e.g., EMTs, firefighters, law enforcement), and corrections officers will still need to make work-relatedness determinations pursuant to 29 CFR § 1904 for COVID-19 infections. For now, employers of workers in all other industries, including the construction industry, are not required to make work-relatedness determinations except in two, more narrow circumstances:

1. there is objective evidence that a COVID-19 case may be work related (e.g., a number of cases developing among workers who work closely together); and
2. this objective evidence is reasonably available to employer (e.g., information given to employer by employees or information learned by employer in ordinary course of managing its business and employees).

OSHA made this clarification specifically because, other than those specific front-line industries, employers "may have difficulty making determinations about whether workers who contracted COVID-19 did so due to exposures at work." OSHA also stated that this clarification was necessary to "help employers focus their response efforts on implementing [good hygiene practices](#) in their workplaces and otherwise mitigating COVID-19's effects, rather than on making difficult work-relatedness decisions in circumstances where there is community transmission."

The construction industry is not entirely relieved of any recordable requirements for COVID-19 infections, but this enforcement guidance from OSHA should allow construction companies to focus more on protecting their employees than on investigating infections.



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