

COVID-19 OSHA Recordkeeping: What If an Employee Tests Positive?

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In an interim guidance issued late last week, the Occupational Safety and Health Administration (OSHA) confirmed that COVID-19 is a recordable illness under OSHA's recordkeeping requirements. Thus, employers are responsible for recording a case of an employee with coronavirus if:

1. the case is a "confirmed" case of COVID-19
2. the case is "work-related"
3. the case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7

A **confirmed** case means an individual with at least one respiratory specimen that tested positive for SARS-CoV-2.

The definition for **work-related** is changed for most employers to make this determination easier. For employers of workers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions, employees must continue to make work-relatedness determinations pursuant to 29 CFR § 1904.

For all other employers, a COVID-19 case is considered work-related only if:

- a. There is "objective evidence" that a COVID-19 case may be work-related. For example, a number of cases developing among workers who work closely together without an alternative explanation; and
- b. The evidence was "reasonably available" to the employer. Reasonably available evidence includes information given to the employer by employees, and information an employer learns in the ordinary course of managing its business and employees.

This policy is intended to allow employers to focus their efforts on maintaining safe workplaces, rather than making difficult work-relatedness decisions.

There are number of considerations for managing your workplace after an employee tests positive. Levenfeld Pearlstein is available to advise through every step in the process.

For more resources and LP's response to COVID-19, [visit this webpage](#) .