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OSHA Requires Certain Employers To Document “Work-Related” COVID-19 Cases

Eliminating hazards from COVID-19 remains a top priority for the Occupational Safety and Health Administration (“OSHA”). According to OSHA, because the government and the private sector have taken rapid and evolving steps to slow the virus's spread, protect employees, and adapt to new ways of doing business, in these unprecedented times “employers should be taking action to determine whether employee COVID-19 illnesses are work-related and thus recordable.” As workplaces reopen, OSHA will continue to ensure safe and healthy conditions for America's working men and women pursuant to the following framework. Employers are reminded of the guidance recently issued by OSHA, which requires employers to record “work-related” COVID-19 cases in the employer’s OSHA 300 Log of Work-Related Injuries and Illnesses. This guidance applies to employers who are required to maintain OSHA 300 logs such as automobile dealerships, liquor stores and lessors of real estate. The guidance does not apply to employers who are exempt from maintaining such logs, such as employers with 10 or fewer employees, and companies that are deemed “low hazard” such as florists, dental offices and universities.

OSHA’s guidance requires that applicable employers conduct a reasonable inquiry into whether an employee’s illness is “work-related.” The employer does not need to conduct extensive inquiries into an employee’s medical information, but must simply ask the employee how he or she believes the illness was contracted, discuss factors that may have led to such illness, and review the employee’s work environment for potential exposure. An employer may also consider whether the employee worked closely with someone who was also diagnosed with COVID-19, or whether an employee had close exposure with someone with a confirmed case of COVID-19.

If, after a “reasonable and good faith inquiry,” an employer cannot determine that the employee contracted COVID-19 during “work-related” activities, the employer does not need to record that case on the OSHA 300 log. However, employers should be aware that OSHA will “exercise enforcement discretion” in evaluating whether the employer’s inquiry into the “work-relatedness” of the illness was “reasonable.” Under OSHA’s new guidance, an employer must record a case of COVID-19 if an employee has a confirmed case, the case is “work-related”, and the case meets one or more of the recording criteria set forth under the general OSHA standards (i.e., medical treatment beyond first aid, case results in death, restricted work or transfer to other employment, significant injury or illness diagnosed by a licensed health care provider).

Employers are strongly encouraged to closely monitor and record workplace COVID-19 cases regardless of where the employee may have contracted the illness.

The experienced Labor & Employment attorneys at Kaufman Dolowich & Voluck are available to assist. We will continue to keep employers apprised of any further developments impacting the workplace, and are available to answer any questions and provide additional guidance to help employers navigate the ever-changing landscape of laws enacted during the COVID-19 pandemic and its interplay with other local, state and federal laws. For more information, please contact an experienced member of KD’s Labor & Employment Law Practice Group.