
MEMORANDUM

Date: March 26, 2020
To: ARTBA Membership
From: Bradley Sant, SVP Safety and Education
RE: COVID-19 and OSHA

In early March, the U.S. Occupational Safety and Health Administration (OSHA) posted information on its website stating, “COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties.” Such communications from OSHA have created concerns and some misunderstanding for employers struggling to keep their businesses operating. After consulting with the safety directors at several of our leading member-companies, I want to provide an additional explanation which helps address those issues.

While OSHA maintains such an exposure could be a recordable incident, that reality is very unlikely for those in the transportation construction industry whom ARTBA represents. For COVID-19 to be recordable, the exposure must occur under a specific set of circumstances prescribed by OSHA for posting on an “OSHA 300” log, as discussed later in this memo. Keep in mind that OSHA’s standards are written for all employers. However, for transportation construction employers specifically – whether contractors, designers, suppliers, manufacturers or others – the need to post such an illness is very improbable.

OSHA recently provided some clarification on the matter as a result of the confusion its initial communications created. On its webpage, OSHA specifies the circumstances for recording the illness (see <https://www.osha.gov/SLTC/covid-19/> for more details):

“COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all the following are met:

- The case is a confirmed case of COVID-19 (as prescribed by the U.S. Centers for Disease Control);
- 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](#) (e.g.

medical treatment beyond first-aid, days away from work).”

(Emphasis added in the above passage)

Under the OSHA law, employers are required to provide a place of employment that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees” (emphasis added). While an illness from contact with a virus such as COVID-19 may well be a recognized hazard for someone working in the medical field, this is not the type of exposure transportation construction employers would be required to anticipate under most circumstances. One can make up a scenario where a transportation construction employer might be out of compliance, such as forcing a person to work in close proximity to another worker demonstrating symptoms of being extremely sick with a contagious illness, and the first worker becomes ill as a result. However, we know our industry is working hard to prevent instances like this on job sites, making this example highly unlikely.

As noted, work-related injuries or illnesses are recordable only under certain circumstances. If there is an employee with a confirmed case of COVID-19, and the work environment was the likely cause or contributing factor, then it would be recordable if the conditions for noting the illness on the OSHA 300 log are met. Again, employers should look to 29 CFR 1904.7 for detailed guidance. The primary factors noted there include:

- The employee receives medical treatment beyond first aid (e.g. sees a doctor; is prescribed medicine, etc.);
- The doctor or employer requires the employee to work under “restricted duty;” and
- The treating physician mandates days away from work (lost time – meaning the employee is kept from work and cannot work at home due to the virus).

It’s reasonable to conclude that, for OSHA recording purposes, COVID-19 should be treated similarly to an exposure to any other pathogen that causes an illness. Unless the sickness can be demonstrated to be a direct result of the employee’s working conditions, it would not require posting on the OSHA 300 log.

Because of the dynamic environment in which our members are working, ARTBA has written OSHA requesting more explicit instructions on this issue for our industry.

We hope this explanation has been helpful. Please contact me at bsant@artba.org or 202.683.1008 with any questions. Stay safe and be well.