

COMPLIANCE BULLETIN

COVID-19 Reporting Under OSHA Vaccination and Testing ETS

the Occupational Safety and Health Administration (OSHA) has [published](#) a [COVID-19 vaccination and testing emergency temporary standard](#) (ETS) to address the grave danger of COVID-19 infection in the workplace. Affected employers will be required to comply with most provisions of the ETS by **Dec. 6, 2021**, and with its testing requirements by **Jan. 4, 2022**. Affected employers include private employers **with 100 or more employees** (firmwide or companywide count).

On Nov. 6, 2021, the 5th Circuit Court of Appeals [issued](#) a preliminary stay effectively blocking enforcement of the ETS. This situation is currently fluid, and additional action by the courts is expected. However, employers should continue to prepare to comply with the ETS until a final decision is made.

The ETS also addresses employer COVID-19 injury and illness reporting under the Occupational Safety and Health Act (OSH Act). All employers covered by the OSH Act, including those who are partially exempt from maintaining injury and illness records, are required to comply with OSHA reporting requirements ([29 CFR 1904.39](#)).

This compliance bulletin provides an overview of the OSHA reporting requirements employers must follow if they have a work-related COVID-19 inpatient hospitalization or fatality. These requirements do differ from the standard OSHA reporting requirements under [29 CFR 1904](#).

Action Steps

Employers should review, understand and implement these ETS reporting requirements. Employers should also include these reporting requirements in their written policies.

Work-Relatedness

An event or exposure is work-related if the event or exposure in the work environment either:

- **Caused** or **contributed** to the resulting condition; or
- **Significantly aggravated** a preexisting injury or illness.

An injury or illness is presumed to be work-related if it results from events or exposures occurring in the work environment. Some exceptions do apply under [29 CFR 1904.5\(b\)\(2\)](#).

Important Dates

Nov. 5, 2021

ETS effective date.

Dec. 6, 2021

Compliance date for most ETS provisions.

Jan. 4, 2022

Compliance date for ETS testing requirements.



Timely Reporting

Employer reports of work-related COVID-19 fatalities and inpatient hospitalizations are an important element of the agency's efforts to reduce occupational exposure to the virus.

After receiving an employer report, OSHA decides whether an inspection is needed to determine the cause of a work-related COVID-19 fatality or inpatient hospitalization and whether any OSHA standards may have been violated. These reports are critical for the agency to respond quickly to COVID-19 exposure that may pose an ongoing risk to other employees at the worksite.

A timely investigation also allows OSHA to collect evidence at a workplace soon after a work-related COVID-19 fatality or inpatient hospitalization has occurred and can make it easier for the agency to gather relevant information from others at the worksite. This information may be useful in protecting other employees.

Moreover, prompt inspection enables OSHA to gather information to evaluate whether its current standards adequately address the workplace hazard presented from COVID-19. The agency also uses the information gathered from employer reports to form the basis of statistical data on the causes and remediation of work-related COVID-19 fatalities and inpatient hospitalizations.

Addressing COVID-19 Cases

Employers subject to OSHA's reporting requirement must report each work-related COVID-19 fatality to OSHA within eight hours of learning about the fatality. Similarly, each work-related COVID-19 inpatient hospitalization must be reported to OSHA within 24 hours of when employers learn about the inpatient hospitalization.

OSHA indicated the agency added these additional COVID-19 reporting requirements because a delay in the manifestation and progression of symptoms of COVID-19 can lead to hospitalization or fatality outside the normal window for reporting those workplace events.

COVID-19 Related Fatalities

Employers must report each work-related COVID-19 fatality to OSHA **within eight hours of when they learn** about the fatality. This means that employers must make a report to OSHA within eight hours of learning that:

- An employee has died from a confirmed case of COVID-19; and
- The cause of death was the result of work-related exposure to COVID-19.

An incident is considered a confirmed case of COVID-19 if it satisfies the guidelines defined by the [Centers for Disease Control and Prevention](#) (CDC).

Typically, the cause of death is determined by the physician who was responsible for a patient who died in a hospital; however, the cause of death can also be determined by others, such as medical examiners or coroners.

Employers should note that although the COVID-19 reporting regulations require employers to report fatalities within eight hours, this reporting requirement differs from regular fatality reporting requirements ([29 CFR 1904.39\(a\)\(1\)](#)). Under normal circumstances, OSHA requires employers to report a work-related fatality to OSHA if the fatality occurs within 30 days of "the work-related incident."



Prior to this ETS, for purposes of reporting events involving COVID-19, OSHA interpreted the phrase “the work-related incident” to mean “exposure” in the work environment. Therefore, in order to be reportable under [29 CFR 1904.39\(a\)\(1\)](#), a work-related fatality due to COVID-19 needed to have occurred within 30 days of an employee’s exposure in the work environment. However, given the possibility of long-term illness before death, **the 30-day limitation for reporting fatalities to OSHA could restrict OSHA’s ability to receive information about work-related COVID-19 fatalities.**

To address these issues, OSHA states **it has chosen NOT to apply the 30-day limitation period from [29 CFR 1904.39\(b\)\(6\)](#) to the reporting provision.** Therefore, the requirement to report these fatalities is not limited by the length of time between workplace exposure and death. The reporting of work-related COVID-19 fatalities that occur beyond 30 days from the time of exposure will enable the agency to evaluate more work-related COVID-19 fatalities to determine whether immediate investigations are needed to prevent other employees at the same worksite from being exposed to the virus. The report of these fatalities to OSHA facilitates the agency’s timely tracking of this data. Accordingly, employers are required to report each work-related COVID-19 fatality to OSHA within eight hours of the employer learning about the fatality, regardless of when the exposure in the work environment occurred.

COVID-19-related Inpatient Hospitalizations

Under the ETS, employers are required to report each work-related COVID-19 inpatient hospitalization to OSHA within 24 hours of the employer learning about the inpatient hospitalization. Under this paragraph and similar to OSHA’s reporting regulation at [29 CFR 1904.39](#), employers must make a report to OSHA within 24 hours of learning that:

- An employee has been admitted as an inpatient in a hospital due to a confirmed case of COVID-19; and
- The reason for the hospitalization was the result of work-related exposure to COVID-19.

In addition, OSHA regulation [29 CFR 1904.39\(b\)\(6\)](#) requires employers to report inpatient hospitalizations to OSHA only if the hospitalization occurs within 24 hours of the work-related incident. For example, if an employee trips in the workplace and sustains an injury on Monday but is not hospitalized until Thursday, the employer does not need to report the event. In this example, “the work-related incident” occurred on Monday when the employee tripped and was injured in the workplace.

Also, under [29 CFR 1904.39](#), employers must report inpatient hospitalizations to OSHA within 24 hours of knowing both that the employee has been inpatient hospitalized and that the reason for the hospitalization was the result of a “work-related” incident (see [29 CFR 1904.39\(a\)\(2\)](#), [\(b\)\(7\)–\(b\)\(8\)](#)). An event or exposure is work-related if the event or exposure in the work environment either:

- **Caused or contributed** to the resulting condition; or
- **Significantly aggravated** a preexisting injury or illness.

An injury or illness is presumed to be work-related if it results from events or exposures occurring in the work environment.

Since the beginning of the pandemic, the reporting of work-related COVID-19 inpatient hospitalizations under [29 CFR 1904.39](#) has presented unique challenges. As noted above, for purposes of reporting COVID-19 fatalities and inpatient hospitalizations, OSHA has traditionally interpreted the phrase “the work-related incident” in [29 CFR 1904.39\(b\)\(6\)](#) to mean an employee’s “exposure” to COVID-19 in the work environment. Thus, under normal circumstances, in order to



be reportable, an inpatient hospitalization needs to occur within 24 hours of an employee's exposure to COVID-19 in the work environment.

However, given the virus' incubation period and the typical time frame between exposure and the emergence of symptoms severe enough to require hospitalization, it is extremely unlikely for an inpatient hospitalization to occur within 24 hours of an employee's exposure to the virus. To address these issues, this ETS does not limit the COVID-19 reporting requirement to only those hospitalizations that occur within 24 hours of exposure, as in [29 CFR 1904.39\(b\)\(6\)](#). This change in the reporting requirement will result in OSHA making more determinations as to whether immediate investigations are needed at additional worksites.

The elimination of the 24-hour limitation period will allow OSHA to receive more employer reports about work-related COVID-19 inpatient hospitalizations, shedding light on where severe COVID-19 events are occurring. It will also enable the agency to respond more quickly and effectively to these situations. Accordingly, employers must report each work-related COVID-19 inpatient hospitalization to OSHA **regardless of when the employee's exposure in the workplace occurred**. However, consistent with OSHA's normal reporting requirements, when hospitalization for a work-related case of COVID-19 does occur, the employer must report it within 24 hours of learning about the hospitalization. Additionally, OSHA defines inpatient hospitalization as a formal admission to the inpatient services of a hospital or clinic for care or treatment (see [29 CFR 1904.39\(b\)\(9\)](#) and [\(b\)\(10\)](#)). The determination of whether an employee is formally admitted into the inpatient service is made by the hospital or clinic. Treatment in an emergency room only is not reportable.

Work-relatedness Determinations

Given the nature of the disease and the extent of community spread, it may be difficult in some cases for an employer to determine whether an employee's COVID-19 illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace.

For purposes of this ETS, when evaluating whether a fatality or inpatient hospitalization results from a work-related case of COVID-19, employers must follow the criteria in OSHA's recordkeeping regulation at [29 CFR 1904.5](#) for determining work-relatedness. Applying the criteria in [29 CFR 1904.5](#) under this ETS is consistent with how employers make work-relatedness determinations when reporting fatalities and other serious events under [29 CFR 1904.39](#).

Under [29 CFR 1904.5](#), employers must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition; or significantly aggravated a preexisting injury or illness. An injury or illness is presumed work-related if it results from events or exposures occurring in the work environment unless an exception in [29 CFR 1904.5\(b\)\(2\)](#) specifically applies. An injury or illness is presumed work-related if an event or exposure in the work environment is a discernable cause of the injury or illness.

According to [29 CFR 1904.5\(b\)\(3\)](#), the "work environment" includes the employer's establishment and any other location where work is performed or where employees are present as a condition of their employment.

Under [29 CFR 1904.5\(b\)\(3\)](#), employers should evaluate the employee's work duties and environment and determine whether it is more likely than not that exposure at work caused or contributed to the illness. Due to the typical incubation period of three to 14 days of COVID-19, an employee's exposure will usually be determined after the fact.



Employers must make reasonable efforts to acquire the necessary information to make good faith work-relatedness determinations under this ETS. In addition, the employer should rely on information that is reasonably available at the time of the fatality or inpatient hospitalization.

A work-related exposure in the work environment would likely include close contact with a person known to be infected with COVID-19. For example, although work-relatedness must be determined on a case-by-case basis, if a number of COVID-19 illnesses develop among coworkers who work closely together without an alternative explanation, it is reasonable to conclude that an employee's fatality or inpatient hospitalization is work-related. On the other hand, if there is not a known exposure to COVID-19 that would trigger the presumption of work-relatedness, employers must evaluate the employee's work duties and environment to determine whether it is more likely than not that the employee was exposed to COVID-19 during the course of their employment.

When determining work-relatedness for COVID-19 cases, employers should consider factors such as:

- The type, extent and duration of contact the employee had at the work environment with other people, particularly the general public;
- Physical distancing and other controls that impact the likelihood of work-related exposure;
- The extent and duration of time spent in a shared indoor space with limited ventilation; and
- The employee having had work-related contact with anyone who exhibited signs and symptoms of COVID-19.

OSHA COVID-19 Recordkeeping

Finally, under OSHA's recordkeeping regulation at [29 CFR 1904](#), employers must record on the [OSHA 300 log](#) each work-related fatality, injury, and illness reported to OSHA under [29 CFR 1904.39](#). The work-relatedness determination for fatality and inpatient hospitalization is no different than the requirement to determine work-relatedness when entering fatalities, injuries and illness on the OSH 300 log. Accordingly, the work-relatedness determination for reporting COVID-19 fatalities and inpatient hospitalizations is a determination that is already required to be made by the employer.

Source: [Occupational Safety and Health Administration](#)