

OSHA Issues Coronavirus-Related Citations

Labor & Employment Workforce Watch

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As we all continue to adjust to the “new normal” brought on by COVID-19, employers across the country are recovering from the whiplash caused by the (at times contradictory) rules and regulations federal, state, and local government agencies have issued over the last several months. Now that the framework of rules and regulations has, for the most part, stabilized, the federal Occupational Safety and Health Administration (“OSHA”) and its state counterparts are shifting their focus to ensuring employers take appropriate precautions to protect their employees from COVID-19 and penalizing those who do not—issuing citations to at least 85 establishments since the pandemic started. To protect their workforce and avoid substantial fines and liability, employers should familiarize themselves with OSHA’s recording requirements and other applicable regulations and guidance.

On May 18, 2020, OSHA issued its first COVID-19-related citation to Georgia-based Winder Nursing, Inc. OSHA fined the nursing home \$6,506 for failing to report a work-related injury that resulted in the hospitalization of six employees. Although the citation itself did not reference COVID-19, OSHA later confirmed the employees were hospitalized due to COVID-19.

On May 19, OSHA released a [memorandum](#) clarifying its recordkeeping and reporting requirements for COVID-19. The memorandum explains that COVID-19 qualifies as a recordable illness if it is work related¹ and results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. COVID-19 may trigger the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

Since releasing the memorandum, OSHA has issued COVID-related citations against several other nursing homes and medical facilities related to, among other things, OSHA’s respiratory protection standards, lack of adequate PPE, and failure to enforce social distancing measures.

Although OSHA has focused its attention on nursing homes and medical facilities, they are not the only industries to find themselves in OSHA’s crosshairs. On September 4, 2020, Cal/OSHA announced it had cited 11 employers for failure to protect employees from COVID-19 exposure. The 11 companies spanned the food processing, meat packing, health care, agriculture, and retail industries, and fines ranged from \$2,035 to \$51,190. In each case, Cal/OSHA opened investigations upon notification of several illnesses or complaints of workplace hazards. DL Poultry, Inc., a food processing facility, received the largest penalty. Cal/OSHA asserts that the company put workers at risk by failing to ensure they were distanced at least six feet apart or by installing Plexiglass or other

barriers between them. In addition to the 11 citations, Cal/OSHA conducted almost 8,000 applicable assistance visits and engaged with more than 40,000 businesses as part of its ongoing outreach and education initiative. Cal/OSHA and other agencies also have provided employers with online guidance.

As COVID-19 continues to spread, OSHA continues to receive an unprecedented number of health and safety complaints. While many of us are feeling “pandemic fatigue,” employers must continue to protect their workers and comply with all applicable rules and regulations in connection with COVID-19. To ensure compliance, employers should stay up to date on regulations and guidance issued by [OSHA](#), the [Centers for Disease Control and Prevention \(CDC\)](#), and state and local health authorities (for example, guidance and regulations for Texas employers can be found [here](#)), and confer with in-house counsel or outside counsel on the best practices for implementing the [guidance](#).

¹ Under 29 CFR § 1904.5, an employer must consider an injury or illness to be work-related if an event or exposure in the work environment (as defined by 29 CFR § 1904.5(b)(1)) either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in 29 CFR § 1904.5(b)(2) specifically applies. OSHA reports that it is exercising enforcement discretion regarding work-relatedness in the context of COVID-19, which may be difficult to establish. As a practical matter, employers should err on the side of recording COVID-19 illnesses in accordance with OSHA, especially if multiple employees who work closely with one another contract the virus.

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