OSHA Increases On-Site Inspections, Expands Employee Illness Recordkeeping Requirements in Response to Businesses Reopening

As various states continue to reopen their economies, the U.S. Department of Labor's Occupational Health & Safety Administration (OSHA) has announced plans to increase on-site inspections in response to the ongoing COVID-19 pandemic. In addition, OSHA has expanded its employee illness recordkeeping requirements to all employers.

On May 20, 2020, OSHA published its Updated Interim Enforcement Plan for COVID-19, which will go into effect on May 26, 2020. The Plan provides instructions and guidance to OSHA Area Offices and Compliance Safety and Health Officers (CSHOs) for handling complaints, referrals, and severe illness reports related to COVID-19.

As part of an employer's responsibility to maintain a healthy and safe workplace, OSHA requires employers to "examine COVID-19 cases among workers and respond appropriately to protect workers, regardless of whether a case is ultimately determined to be work-related."

Consequently, in tandem with OSHA's plan to increase inspections in connection with reported cases of COVID-19, it has also expanded its existing recordkeeping requirements to all employers. These requirements call for an employer to record a case of work-related illness if the case:

To slow the spread of the virus as businesses reopen, employers are now required to record cases of work-related COVID-19 under OSHA's existing recording policies. This is to be distinguished from an employer's responsibility to report COVID-19 illnesses in the workplace that result in a fatality or an inpatient hospitalization, amputation, or loss of an eye. Following this update, both OSHA's recording and reporting requirements in connection with the pandemic will now apply to employers with 10 or fewer employees.

OSHA will utilize a "reasonable and good faith" standard to assess whether employers are in compliance with OSHA's recording requirements. If after a reasonable and good faith inquiry an employer is unable to determine whether a case of COVID-19 is work-related, the illness need not be recorded as a workplace illness.

CSHOs will consider three broad factors when assessing an employer's reasonable and good faith efforts to rule out cases of COVID-19 as work-related:

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