Labor & Employment Law Daily Wrap Up, OSHA NEWS—COVID-19 reporting violation against Winder Nursing withdrawn; FAQs updated, (Oct. 1, 2020)

Labor & Employment Law Daily Wrap Up

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The agency provided little detail about the Winder Nursing citation.

Based on guidance contained in its updated frequently asked questions on the need to report employees’ in-patient hospitalizations and fatalities resulting from work-related cases of COVID-19, the OSHA announced on September 30 that it is withdrawing its citation against Winder Nursing Inc. in Winder, Georgia.

**Citation withdrawal.** The federal health and safety agency provided no further information in its press release about the nature of the violations against Winder Nursing, but an establishment search of OSHA’s database indicates that a citation and penalty of $6,506 was issued against the company on May 18, 2020, and the penalty was reduced to $3,903.60 by informal settlement on June 19, 2020. Although the inspection at the time of the database search was listed as incomplete (Nr), the violation detail indicates "NrIncidents: 6" and "NrExposed: 156."

**Updated FAQs.** At the same time, OSHA announced updated FAQs on reporting coronavirus hospitalizations and fatalities. The reporting FAQs state as follows:

**Question:** How do I report the fatality or in-patient hospitalization of an employee with a confirmed, work-related case of COVID-19?

**Answer:** You may report a fatality or in-patient hospitalization using any one of the following:

- Call the nearest OSHA office;
- Call the OSHA 24-hour hotline at 1-800-321-OSHA (6742); or
- By electronic submission, report online.

Be prepared to supply: Business name; name(s) of employee(s) affected; location and time of the incident; brief description of the incident; and contact person and phone number so that OSHA may follow-up with you (unless you wish to make the report anonymously).

**Question:** An employee has been hospitalized with a work-related, confirmed case of COVID-19. Do I need to report this in-patient hospitalization to OSHA?

**Answer:** Under 29 CFR 1904.39(b)(6), employers are only required to report in-patient hospitalizations to OSHA if the hospitalization "occurs within twenty-four (24) hours of the work-related incident." For cases of COVID-19, the term "incident" means an exposure to SARS-CoV-2 in the workplace. Therefore, in order to be reportable, an in-patient hospitalization due to COVID-19 must occur within 24 hours of an exposure to SARS-CoV-2 at work. The employer must report such hospitalization within 24 hours of knowing both that the employee has been in-patient hospitalized and that the reason for the hospitalization was a work-related case of COVID-19. Thus, if an employer learns that an employee was in-patient hospitalized within 24 hours of a work-related incident, and determines afterward that the cause of the in-patient hospitalization was a work-related case of COVID-19, the case must be reported within 24 hours of that determination. See 29 CFR 1904.39(a)(2), (b)(7)-(b)(8).

Employers should note that 29 CFR 1904.39(b)(6)'s limitation only applies to reporting; employers who are required to keep OSHA injury and illness records must still record work-related confirmed cases of COVID-19, as required by 29 CFR 1904.4(a). For more information on recording cases of COVID-19, see https://

**Question:** An employee has died of a work-related, confirmed case of COVID-19. Do I need to report this fatality to OSHA?

**Answer:** Under 29 CFR 1904.39(b)(6), an employer must “report a fatality to OSHA if the fatality occurs within thirty (30) days of the work-related incident.” For cases of COVID-19, the term “incident” means an exposure to SARS-CoV-2 in the workplace. Therefore, in order to be reportable, a fatality due to COVID-19 must occur within 30 days of an exposure to SARS-CoV-2 at work. The employer must report the fatality within eight hours of knowing both that the employee has died, and that the cause of death was a work-related case of COVID-19. Thus, if an employer learns that an employee died within 30 days of a work-related incident, and determines afterward that the cause of the death was a work-related case of COVID-19, the case must be reported within eight hours of that determination.

Employers should note that 29 CFR 1904.39(b)(6)’s limitation only applies to reporting; employers who are required to keep OSHA injury and illness records must still record work-related fatalities, as required by 29 CFR 1904.4(a). For more information on recording cases of COVID-19, see https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19.