

OSHA's Letter of Interpretation

Understanding Your Recordkeeping Responsibilities – Seven Scenarios



Presented By
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Understanding OSHA Regulations & Interpretations

Featured Letter of Interpretation: OSHA Recordkeeping

This month we discuss seven common question's regarding OSHA's injury & illness recordkeeping. There has always been confusion as to what is to be recorded and what is not recorded.

Many of the injuries and illnesses you will experience are straight forward; however some reside in the "grey area". In these scenarios we look to OSHA's Letters of Interpretation to provide definitive answers.

This month's featured letter of interpretation covers seven distinct cases and brings to light new recordkeeping principals. The LOI is dated January 15, 2004.

Note the following key points:

- A case is work-related if it is *more likely than not* that an event or exposure in the work environment was a cause of the injury or illness.
- Company parking lots and sidewalks are part of the employer's establishment for recordkeeping purposes.
- The employer would have to enter the additional days away from work on the OSHA 300 log based on receiving revised information from the physician or other licensed health care professional.
- Under Section 1904.5(b)(2)(v), an injury or illness is not work-related if it is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment **outside** of the employee's assigned working hours. In order for this exception to apply, the case must meet **both** of the stated conditions.

- The recordkeeping regulation contains no general exception for purposes of determining work-relationship for cases involving acts of violence in the work environment.
- Whether the employee had not clocked in to work does not affect the outcome for determining work-relatedness.
- Section 1904.31 states that the employer must record the injuries and illnesses that occur to employees not on its payroll if it supervises them on a day-to-day basis.
- Day-to-day supervision generally exists when the employer "supervises not only the output, product, or result to be accomplished by the person's work, but also the details, means, methods, and processes by which the work objective is accomplished."

The following letter of interpretation was taken from the OSHA website. No text has been added or deleted; however we have added line numbers on the left side of the text and we have highlighted certain text sections in yellow for clarification purposes.

1 January 15, 2004

2
3 Ms. Leann M. Johnson-Koch
4 1200 Nineteenth Street, N.W.
5 Washington, D.C. 20036-2412

6
7 Dear Ms. Johnson-Koch:

8
9 Thank you for your E-mail to the Occupational Safety and Health Administration
10 (OSHA) regarding the Injury and Illness Recording and Reporting Requirements
11 contained in 29 CFR Part 1904. Your letter was forwarded to my office by
12 Richard Fairfax, Director, Directorate of Enforcement Programs. The Division of
13 Recordkeeping Requirements is responsible for the administration of the OSHA
14 injury and illness recordkeeping system nationwide. Please excuse the delay in
15 responding to your request.

16
17 In your letter, you ask OSHA to clarify the following scenarios to ensure accurate
18 and consistent guidance to your members for purposes of OSHA Recordkeeping
19 requirements. I will address your scenarios by first restating each one and then
20 answering it.

21
22 **Scenario 1:**

- 23
- 24 ▪ An employee reported to work at 7:00 a.m.
 - 25 ▪ At 12:15 p.m. the employee reported that his toes on his left foot had
26 started swelling and his foot had started hurting.
 - 27 ▪ The employee wanted to go to a doctor for evaluation.
 - 28 ▪ On the First Report of Injury, that the employee completed before he
29 went to the doctor, the employee indicated that the cause of the illness
30 was "unknown (feet wet at cooling tower)."
 - 31 ▪ When answering the doctor's question: "How did injury occur?" the
32 employee answered that the only thing he could think of was that his feet
33 were wet all the previous day due to work in the morning at a cooling
34 tower. The cooling tower water is treated to remove bacteria and then
35 used in process operations in the plant.
 - 36 ▪ The doctor described the illness/injury as foot edema/cellulitis.
 - 37 ▪ The doctor also prescribed the injury as an occupational disease,
38 prescribed an antibiotic, and the employee missed one day of work.
 - 39 ▪ The company sent the employee to a second doctor who said to continue
40 using the antibiotic.
 - 41 ▪ Neither doctor could state conclusively that the foot edema/cellulitis was
42 or was not due to the employee's feet being wet due to work at the
43 cooling tower.
 - 44 ▪ Neither doctor is a specialist in skin disorders.

- 44 ▪ During an incident review at the site, the employee again said he did not
45 know if his feet being wet all day the previous day caused the
46 injury/illness.
47 ▪ The employee also stated that he had not worn the personal protective
48 equipment, rubber boots, prescribed for this task.

49 The company determined that this injury/illness is not work-related (did not
50 occur in the course of or as a result of employment), since neither physician nor
51 the employee can state with certainty that the injury/illness was caused by the
52 employee's feet being wet all day due to work at the cooling tower. Since the
53 injury/illness was determined to not be work-related, then the company deemed
54 the incident non-recordable.

55
56 **Response:** A case is work-related if it is *more likely than not* that an event or
57 exposure in the work environment was a cause of the injury or illness. The work
58 event or exposure need only be one of the causes; it not need to be the sole or
59 predominant cause. In this case, the fact that neither the physician nor the
60 employee could state with certainty that the employee's edema was caused by
61 working with wet feet is not dispositive. The physician's description of the edema
62 as an "occupational disease," and the employee's statement that working with
63 wet feet was "the only thing he could of" as the cause, indicate that it is more
64 likely than not that working with wet feet was a cause. The case should be
65 recorded on the OSHA 300 Log.

66
67 **Scenario 2:**

68
69 An employee must report to work by 8:00 a.m.

- 70 ▪ The employee drove into the company parking lot at 7:30 a.m. and
71 parked the car.
72 ▪ The employee exited the car and proceeded to the office to report to
73 work.
74 ▪ The parking lot and sidewalks are privately owned by the facility and both
75 are within the property line, but not the controlled access points (i.e.,
76 fence, guards).
77 ▪ The employee stepped onto the sidewalk and slipped on the snow and ice.
78 ▪ The employee suffered a back injury and missed multiple days of work.

79 The company believes that the employee was still in the process of the commute
80 to work since the employee had not yet checked in at the office. Since a work
81 task was not being performed, the site personnel deemed the incident not work-
82 related and therefore not recordable.

83
84 **Response:** Company parking lots and sidewalks are part of the employer's

85 establishment for recordkeeping purposes. Here, the employee slipped on an icy
86 sidewalk while walking to the office to report for work. In addition, the event or
87 exposure that occurred does not meet any of the work-related exceptions
88 contained in 1904.5(b)(2). The employee was on the sidewalk because of work;
89 therefore, the case is work-related regardless of the fact that he had not actually
90 checked in.

91

92 **Scenario 3:**

93

94 The employee described in Scenario 2 missed 31 days of work due to the back
95 injury.

- 96 ▪ On day 31, the doctor provided a release for returning to work.
- 97 ▪ The next morning (day 32), when the employee was due to report to
98 work, the employee stated that his back was hurting, and the employee
99 did not report to work.
- 100 ▪ The employee scheduled a doctor's appointment, with the same doctor,
101 and visited the doctor on day 33.
- 102 ▪ The doctor issued a statement stating that the employee was not able to
103 return to work.

104 Since the employee was released to return to work, the company does not
105 believe it has to count the intervening two days on the OSHA log.

106

107 **Response:** The employer would have to enter the additional days away from
108 work on the OSHA 300 log based on receiving information from the physician or
109 other licensed health care professional that the employee was unable to work.

110

111 **Scenario 4:**

- 112 ▪ An employee reports to work.
- 113 ▪ Several hours later, the employee goes outside for a "smoke break."
- 114 ▪ The employee slips on the ice and injures his back.

115 Since the employee was not performing a task related to the employee's work,
116 the company has deemed this incident non-work related and therefore not
117 recordable.

118

119 **Response:** Under Section 1904.5(b)(2)(v), an injury or illness is not work-
120 related if it is solely the result of an employee doing personal tasks (unrelated to
121 their employment) at the establishment outside of the employee's assigned
122 working hours. In order for this exception to apply, the case must meet both of
123 the stated conditions. The exception does not apply here because the injury or
124 illness occurred within normal working hours. Therefore, your case in question is

125 work-related, and if it meets the general recording criteria under Section 1904.7
126 the case must be recorded.

127

128 **Scenario 5:**

- 129 ▪ An employee drives into the company parking lot at 7:30 a.m., exits his
130 car, and proceeds to cross the parking lot to clock-in to work.
- 131 ▪ A second employee, also on the way to work, approaches the first
132 employee, and the two individuals get into a physical altercation in the
133 parking lot. The first employee breaks an arm during the altercation.
- 134 ▪ The employee goes to the doctor and receives medical treatment for his
135 injury.

136 The company deems this non-work related, and therefore non-recordable, since
137 the employees had not yet reported to work and a work task was not being
138 performed at the time of the altercation.

139

140 **Response:** The recordkeeping regulation contains no general exception for
141 purposes of determining work-relationship for cases involving acts of violence in
142 the work environment. Company parking lots/access roads are part of the
143 employer's premises and therefore part of the employer's establishment.
144 Whether the employee had not clocked in to work does not affect the outcome
145 for determining work-relatedness. The case is recordable on the OSHA log,
146 because the injury meets the general recording criteria contained in Section
147 1904.7.

148

149 **Scenario 6:**

- 150 ▪ An employee injured a knee performing work-related activities in 2001.
- 151 ▪ The accident was OSHA recordable and subject to worker's compensation.
- 152 ▪ The employee had arthroscopic knee surgery eleven months later and was
153 released to full duty a month and a half after the arthroscopic surgery.
- 154 ▪ The employee had a second knee injury three months after the return to
155 work release (after the first surgery).
- 156 ▪ Post-surgery (second surgery), the doctor prescribed Vioxx[®] as an anti-
157 inflammatory.
- 158 ▪ Approximately one and one-half months after the second knee surgery,
159 the employee was given another full release to return to work full duty
160 and returned to work.
- 161 ▪ However, the doctor told the employee to continue to take Vioxx[®] as
162 prescribed (as needed) and to return to the doctor as needed.
- 163 ▪ The employee scheduled a follow-up appointment with the doctor.
- 164 ▪ The day before the appointment, the employee bumped his knee at work.

- 165 ▪ During his scheduled doctor's appointment (was to be the last follow-up
166 visit) the employee mentioned the latest incident (bumping the knee) to
167 the doctor and showed him where the pain was occurring due to bumping
168 his knee.
- 169 ▪ The doctor stated that the employee had an inflamed tendon (Grade 1
170 lateral collateral ligament sprain) that was not part of the initial surgery
171 (patellar tendonitis).
- 172 ▪ The doctor stated in the diagnosis that the original injury that required
173 knee surgery was resolved.
- 174 ▪ The doctor told the employee to continue taking Vioxx[®] for the inflamed
175 tendon.

176 Since the employee was already taking the medication prescribed (Vioxx[®]), the
177 site does not believe this is recordable as a second incident.

178

179 **Response:** In the recordkeeping regulation, the employer is required to follow
180 any determination a physician or other licensed health care professional has
181 made about the status of a new case. The inflamed tendon is a new case
182 because the employee had completely recovered from the previous injury and
183 illness and a new event or exposure had occurred in the work environment.
184 Therefore, for purposes of OSHA recordkeeping, the employer would enter the
185 case on the OSHA 300 log as appropriate.

186

187 **Scenario 7:**

- 188 ▪ A site hired numerous temporary workers at its plant.
- 189 ▪ Three temporary workers were injured.
- 190 ▪ They each received injuries that were recordable on the OSHA 300 Log.
- 191 ▪ The employees were under the direct supervision of the site.

192 Is it correct that these injuries were recordable on the site log or should they
193 have been recordable on the temp agency log? What are the criteria related to
194 temporary workers that need to be reviewed to determine which OSHA log is
195 appropriate for recording the injury/illness?

196

197 **Response:** Section 1904.31 states that the employer must record the injuries
198 and illnesses that occur to employees not on its payroll if it supervises them on a
199 day-to-day basis. Day-to-day supervision generally exists when the employer
200 "supervises not only the output, product, or result to be accomplished by the
201 person's work, but also the details, means, methods, and processes by which the
202 work objective is accomplished."

203

204 Thank you for your interest in occupational safety and health. We hope you find
205 this information helpful. OSHA requirements are set by statute, standards and

206 regulations. Our interpretation letters explain these requirements and how they
207 apply to particular circumstances, but they cannot create additional employer
208 obligations. This letter constitutes OSHA's interpretation of the requirements
209 discussed. Note that our enforcement guidance may be affected by changes to
210 OSHA rules. In addition, from time to time we update our guidance in response
211 to new information.

212 Sincerely,

213

214 Frank Frodyma

215 Acting Director

216 Directorate of Evaluation and Analysis



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The information contained within this report is intended to provide basic, non-exhaustive information on OSHA Recordkeeping issues. Because many factors play a role in successful OSHA compliance, The Carlyle Consulting Group assumes no legal responsibility for the information contained within this document.