

# CAPELL & HOWARD<sup>PC</sup>

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## OSHA ENFORCEMENT GUIDANCE & INTERIM RESPONSE PLAN

### Enforcement Guidance

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) issued interim guidance for enforcing OSHA's recordkeeping requirements for recording cases of COVID-19.

- See <https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>

Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and employers are responsible for recording cases of COVID-19, if the case:

- Is confirmed as a COVID-19 illness;
- Is work-related as defined by 29 CFR 1904.5; and
- Involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work.
- See <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.5>.

In areas where there is ongoing community transmission, employers (other than those in healthcare and emergency medical, firefighting and law enforcement services) may have difficulty figuring out whether workers who contracted COVID-19 did so due to exposures at work. Therefore, until further notice, OSHA will NOT enforce its recordkeeping requirements to require these employers to make work-relatedness determinations for COVID-19 cases, except where:

- There is objective evidence that a COVID-19 case may be work-related; and
- The evidence was reasonably available to the employer.

Employers of workers in the healthcare industry, emergency response organizations and correctional institutions must continue to make work-relatedness determinations pursuant to 29 CFR Part 1904.

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## Interim Enforcement Response Plan

OSHA also announced an interim enforcement response for the coronavirus pandemic. This response plan provides instructions and guidance to OSHA Area Offices and compliance safety and health officers (CSHOs) for handling coronavirus-related complaints, referrals, and severe illness reports.

- See <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>

During the coronavirus outbreak, OSHA Area Offices will utilize their inspection resources to fulfill mission essential functions and protect workers exposed to the disease. The response plan contains interim procedures that give field offices more flexibility and discretion in securing safe workplaces in this evolving environment.

- The response plan outlines procedures for addressing reports of workplace hazards related to the coronavirus.
- Fatalities and imminent danger exposures related to the coronavirus will be prioritized for on-site inspections.
- The response plan contains procedures and sample documentation for CSHOs to use during coronavirus-related inspections.
- Workers requesting inspections, complaining of coronavirus exposure, or reporting illnesses may be protected under one or more whistleblower statutes and will be informed of their protections from retaliation.

The memorandum ends with several attachments:

1. Specific enforcement procedures <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19#attach1>;
2. A sample employer letter for COVID-19 activities <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19#attach2>;
3. A sample hazard alert letter <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19#attach3>;
4. A sample alleged violation description for a citation under the general duty clause, Section 5(a)(1), of the Occupational Safety and Health (OSH) Act <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19#attach4>; and
5. Additional references, including OSHA's prior COVID-19-related enforcement memoranda <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19#attach5>.

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If you have questions about what to do with your business or company during the COVID-19 pandemic, call Capell & Howard at 334-241-8000 and ask for one of our employment lawyers: **Christopher Weller, Barbara Wells, Brooke Lawson, Carla Gilmore, Mai Lan Isler, or Blake Brookshire**. Or, visit our web page at **[www.chlaw.com](http://www.chlaw.com)** for contact info and the latest alerts.

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