



OCT - 9 2007

Reply to the attention of:

Ms. Florence Indovina
Insurance & Claims Specialist
LeChase Construction Services, LLC
300 Trolley Boulevard
Rochester, NY 14606

COPY

Dear Ms. Indovina:

Thank you for your May 24 2007 letter to the Occupational Safety and Health Administration (OSHA) regarding clarification of the Injury and Illness Recording and Reporting requirements contained in 29 CFR Part 1904. You are requesting an interpretation regarding the rules for determining the date for OSHA recordkeeping purposes. In your letter, you provide two scenarios.

Scenario 1: In December 2006, an employee in a job reports that he has a back strain. He sees a physician and to date is still out of work (we presume the injury meets the Part 1904 recording criteria) with the possibility of surgery. Should this be recorded in the 2006 stats with a cap of 180 days out of work, or should it be split with the 2007 stats?

Response: Paragraph 1904.7(b)(3)(ix) directs employers how to handle a case that carries over from one year to the next. Some cases occur in one calendar year and then result in days away from work in the next year. For example, a worker may be injured on December 20th and be away from work until January 10th. Section 1904.7(b)(3)(is) directs the employer only to record this type of case once, in the year that it occurred. If the employee is still away from work when the annual summary is prepared (before February 1), the employer must either count the number of days the employee was away or estimate the total days away that are expected to occur, use this estimate to calculate the total days away during the year for the annual summary, and then update the Log entry later when the actual number of days is known or the case reaches the 180-day cap allowed in Section 1904.7(b)(3)(vii).

Scenario 2: In December 2006, an employee in a job reports that he has a back strain. He doesn't see a physician and comes back to work the next day. He works for a few weeks and then goes to his physician saying it's not getting any better. The physician takes him out of work for an extended period of time. Should this be recorded in the 2006 stats as this was the date of injury or should it be on the actual day he stops working which would be in the 2007 stats?

Response: Ordinarily, the case should be recorded on the Log for the year in which the injury or illness occurred. Where the date of injury or illness cannot be determined, the date the employee reported the symptoms or received treatment must be used. In the case described in your letter, the injury would be recorded on the 2006 Log if the employee could specify the date in 2006 when the symptoms occurred. Please see OSHA's

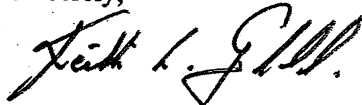
Frequently Asked Question (FAQ) to the recordkeeping regulation - FAQ 29-5 -
www.osha.gov/recordkeeping/entryfaq.html.

We presume from your letter there was a single recordable injury or report of symptoms, not a series of contributing or aggravating events or exposures over time. Please keep in mind that Section 1904.6(a) provides that an employer must consider an injury or illness to be a new case if (1) the employee has not experienced a recorded injury or illness of the same type that affects the same part of the body, or (2) the employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms of the previous injury or illness had disappeared) and an event or exposure in the work environment causes the injury or illness, or its signs or symptoms, to reappear.

In your example, in order to use the date the employee first reported the symptoms, you must determine that no intervening event or exposure (between December 2006 and through the next year 2007) occurred in the work environment that was a contributing or aggravating factor. You should evaluate the employee's work environment and duties during that time period, or any other relevant information, to make this decision. This analysis should include whether or not the injured employee has recovered fully between episodes, and whether or not the injury is the result of subsequent exposures or events in the workplace. If it seems likely that any new event or exposure in the work environment in 2007 was a contributing or aggravating factor in 2007, the case should be recorded on the 2007 OSHA 300 Log. See, OSHA's Letter of Interpretation - *Determination of the date of an injury or illness for OSHA recordkeeping purposes* - November 30, 2004.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Section 8(c)(2) of the Occupational Safety and Health Act of 1970 (OSH Act) authorizes OSHA to issue regulations requiring employers to make and maintain accurate records of work-related injuries and illnesses. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please contact OSHA's Office of Statistical Analysis at (202) 693-1875.

Sincerely,



Keith L. Goddard, Director
Directorate of Evaluation and Analysis