



• **Standard Number:** 1904.5; 1904.5(b)(2)(v)

February 16, 2010

Mr. D. Scott Hayes, M.S.  
Hayes Environmental Services, Inc.  
3242 Executive Parkway, Suite 208  
Toledo, OH 43606

Dear Mr. Hayes:

Thank you for your recent letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping regulation contained in 29 CFR Part 1904 – Recording and Reporting Occupational Injuries and Illnesses. In an effort to provide you with prompt and accurate responses, we developed and continue to refine a set of Frequently Asked Questions (FAQ), in addition to maintaining a log of Letters of Interpretation (LOI) on the OSHA Recordkeeping website.

You ask for a specific interpretation of OSHA's regulation at Section 1904.5, "Determining Work Relatedness."

**Scenario:** A client's employee working for a construction company is paid to work from 7:00 am to 12:00 pm and 12:30 pm to 5:30 pm as bound by the National Maintenance Agreement that applies to craft employees working at this work site. At 12:20 pm (while off the clock), the employee exits a restroom and falls awkwardly, causing a deep laceration which requires sutures to close.

**Question:** Does this case fall within the exception in Section 1904.5(b)(2)(v) for injuries and illnesses that are solely the result of employees doing personal tasks (unrelated to their employment) at the establishment outside of their assigned work hours.

**Response:** Under 29 CFR Subpart C, "Recordkeeping Forms and Recording Criteria," an injury must be recorded if it is work-related, is a new case, and meets one or more of the general recording criteria (such as requiring medical treatment beyond first aid). See 29 CFR §1904.4(a). An injury is presumed to be work-related if it results from an event occurring in the work environment, unless an enumerated exception to this geographic presumption applies. See 29 CFR §1904.5(a). The work environment includes any location where one or more employees are working or are present as a condition of their employment. See 29 CFR §1904.5(b)(1). The geographic presumption (that is, an injury is work-related if it occurs in the work environment) covers cases in which an injury or illness results from activities that occur at work but that are not directly productive. See the preamble to the final rule (66 Fed. Reg. 5916, 5929 (Jan. 19, 2001)).

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 [i.e., the injury or illness must (1) be solely the result of the employee doing personal tasks (unrelated to their employment), and (2) occur outside of the employee's assigned working hours]. For purposes of OSHA recordkeeping, "assigned working hours" means "those hours the employee is actually expected to work, including overtime." See, OSHA's Frequently Asked Question 5-4 at <http://www.osha.gov>. This means that, in order for the exception in Section 1904.5(b)(2)(v) to apply, the injury or illness must occur outside the time the employee is normally expected to be present in the work environment.

Historically, OSHA has not considered the employee's pay status at the time of the incident or the fact that he or she punches in and out with a time clock (or signing in and out) to be relevant when determining whether a case is work-related. See, OSHA's Frequently Asked Questions 5-11, and OSHA's March 10, 2005 letter of interpretation to Dr. Milagros C. Flores. Instead, the focus has been on whether the event or exposure took place when the employee was present in the work environment as a condition of employment.

In your scenario, the exception in Section 1904.5(b)(2)(v) would not apply because the injury occurred during the employee's normal work schedule (lunch break). The exception in Section 1904.5(b)(2)(v) only applies if an injury or illness occurs when the employee is conducting personal tasks while present in the work environment at a time either (1) before the start of the normal work schedule, or (2) after the normal work schedule has ended. In other words, the exception does not apply to injuries and illnesses that occur during breaks (either formal or informal) in the employee's normal work schedule. Therefore, the case you describe in your letter is work-related and must be recorded because it meets the general recording criteria in Section 1904.7 (the injury required sutures).

You can also see our Letters of Interpretation dated January 15, 2004 to Ms. Leann M. Johnson-Koch; May 12, 2006 to Ms. Donna Cale, and February 9, 2009 to Mr. Joe Winkelman (horseplay case).

Thank you for your interest in occupational safety and health. We hope you find this information helpful. 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>.

Sincerely,

Keith Goddard, Director  
Directorate of Evaluation and Analysis