

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the attention of:



FEB 24 2009

COPY

Mr. Jim Robinson
Compass Group
4112 Spring Way Circle
Valrico, FL 33596

Dear Mr. Robinson:

Thank you for your September 26, 2008 letter to the Occupational Safety and Health Administration's (OSHA) Directorate of Standards and Guidance regarding the recordkeeping regulation contained in 29 CFR 1904 - Recording and Reporting Occupational Injuries and Illnesses. Your letter has been forwarded to OSHA's Directorate of Evaluation and Analysis for response. Your letter requested clarification of the requirements set forth at 29 CFR 1904.2, *Partial exemption for establishments in certain industries*.

Background: In your letter, you state you represent a holding company which operates several companies providing soft services. The majority of your business involves food service contracting (Standard Industrial Classification (SIC) 5812) for a wide range of clients, including schools, offices and manufacturing facilities.

Based on the language in Section 1904.2 of OSHA's recordkeeping regulation, your company has been operating under the assumption that food service operations are exempt from OSHA injury and illness recordkeeping. However, we understand that one of your clients has recently questioned this practice based on the language in SIC Major Group 58.

SIC Major Code 58 states:

This major group includes retail establishments selling prepared foods and drinks for consumption on the premises; and also lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption. Restaurants, lunch counters, and drinking places operated as a subordinate service facility by other establishments are not included in this industry, unless they are operated as leased departments by outside operators. Thus, restaurants and lunch counters operated by hotels are classified in Services, Major Group 70; those operated by department stores in Major Group 53; Bars and restaurants owned by and operated for members of civic, social, and fraternal associations only are classified in Industry 841. Mobile food and drink wagons are classified in Industry 5963. [Emphasis added].

Your client believes you should be recording injuries and illnesses under Part 1904 because your food service company does not "lease" café space.

Question: Are food service contractors exempt from OSHA recordkeeping requirements, or does such a determination depend on the type of work conducted by the client, and whether the contractor "leases" the operating space from the client?

Response: OSHA's regulation at Section 1904.2(a) provides that employers in specific low-hazard industries are exempt from OSHA injury and illness recordkeeping. The specific industries included in the low-hazard exemption are listed in non-mandatory Appendix A to Subpart B of OSHA's recordkeeping regulation. The partial industry classification exemption only applies to the retail, services, finance, insurance and real estate industries (SIC 52-89).

Section 1904.2(b)(2) provides that the partial exemption applies to individual business establishments. This means that if a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt. For multi-establishment firms, the industry exemption is based on the SIC code of each establishment, rather than the industrial classification for the entire firm. See, the January 19, 2001, preamble to the final rule revising OSHA's recordkeeping regulation 66 Federal Register 5939 to 5945.

The language in SIC Major Group 58 excludes in-house eating and drinking places, which are owned and operated by the parent company, from that SIC Major Group. For example, restaurants, lunch counters, and other eating or drinking places operated as a subdivision within a manufacturing facility would not be included within SIC Major Group 58. On the other hand, outside companies that contract to operate eating and drinking establishments at a host employer's facility are clearly within SIC Major Group 58, and are exempt from OSHA recordkeeping, regardless of whether they technically "lease" the operating space from the host company. We note the term "lease" used in the definition of SIC Major Group 58 refers to the leasing of employees by the host employer and not the actual leasing of operating space.

Please keep in mind that all employers, regardless of size or industry, must keep injury and illness records if requested to do so by either the Bureau of Labor Statistics in connection with their Annual Survey (section 1904.42), or OSHA in connection with its Data Initiative (section 1904.41). Also, Section 1904.39 provides that all employers, regardless of size or industry, must report to OSHA any work-related incident resulting in a fatality or the in-patient hospitalization of three or more employees within 8 hours. Finally, the Part 1904 partial exemption does not exempt employers from complying with other OSHA safety and health standards or regulations.

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. 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 appraised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith L. Goddard". The signature is fluid and cursive, with the first name "Keith" being the most prominent.

Keith Goddard, Director
Directorate of Evaluation and Analysis