• **Standard Number:** 1904.5; 1904.7

February 28, 2014

Mr. Nathan Pangrace
1375 East Ninth Street
One Cleveland Center
9th Floor
Cleveland, Ohio 44114

Dear Mr. Pangrace:

Thank you for your June 3, 2013 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 the public 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 web page.

**Scenario**: Your letter states an employee experienced an injury while walking up approximately 80 feet of steps while performing his assigned job duties. The employee's left knee suddenly "popped" and the employee could not place weight on the knee. He was attended by the site first aid team and then transported to a medical clinic for evaluation of his knee pain. The employee had no past history of knee problems. The employee was diagnosed as having a strained/sprained left knee by the clinic physician. The medical clinic prescribed pain medication, an immobilizer (splint), crutches and work restrictions that would prevent him from performing one or more routine tasks.

Four days later, a second physician concluded that the knee condition was non-occupational because there was no mechanism of injury, no aggravating factors, and no significant event in the work environment that caused or contributed to his knee condition based on the section 1904.5 (b)(2)(ii) work-related exception.

**Discussion**: Section 1904.5 of OSHA's recordkeeping regulation provides that the decision as to whether a specific injury or illness is work-related is ultimately the responsibility of the employer. However, the regulation allows an employer to seek and consider the guidance of a physician or licensed health care professional (PLHCP). When determining whether an employee's injury or illness is work-related, an employer and/or PLHCP must follow the definitions set forth in section 1904.5.

Section 1904.5(a) provides that injuries and illnesses must be considered work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition. Work-relatedness is presumed for injuries or illnesses resulting from events or exposures in the work environment, unless an exception in section 1904.5(b)(2) specifically

is a cause. The work event or exposure need only be a cause of the injury or illness; it need not be the sole or predominant cause. See, the preamble to the final rule revising OSHA's recordkeeping regulation 66 Federal Register 5929-32, 5946 and 5948. Also, "it is not necessary that the injury or illness result from conditions, activities, or hazards that are uniquely occupational in nature." 66 Federal Register 5929.

**Question 1**: The recordkeeping regulation states that employers must consider an injury or -illness to be work-related if an event or exposure in the work environment either caused or significantly aggravated a pre-existing injury or illness. OSHA has stated that an event includes any identifiable incident, occurrence, activity or bodily movement that occurs in the work environment. Therefore, is the task of walking up 80 feet of steps in the work environment as described in the situation above considered an identifiable "event" and/or "exposure" for the purposes of the recordkeeping regulation, even if there was no slip, trip or fall involved before or after the knee popped?

**Response 1**: Yes, walking up the stairs in the work environment is an identifiable event. Under OSHA's recordkeeping system, normal body movements in the work environment, such as walking, bending down or sneezing, are "events" which trigger the presumption for work-relatedness if they are a discernible cause of an injury. Thus, if a worker experiences a pulled muscle or knee strain while walking across a level floor or climbing a staircase, the case is presumed work-related if the activity of walking or climbing the staircase was a discernible cause of the injury. See, 66 Federal Register at 5946, 5959. Also, as noted above, a work event or exposure need not be the sole, predominant, or significant cause of the injury, so long as a work event is a cause. Clearly, the event of walking up the stairs described in your scenario was a discernible cause of the employee's knee sprain/strain and must be recorded.

**Question 2**: Under section 1904.4(a), the employer must keep records and record each injury that is: i) work-related, and is ii) a new case, and iii) meets one or more general recording criteria. Presumably, all three criteria must be satisfied if the case is to be recorded. Therefore, if a physician determines, in accordance with section 1904.6 (b)(3), that the injury is not a new case, is the employer relieved from any other requirement to determine if the injury is recordable?

**Response 2**: Section 1904.4(a) does provide that an employer must record each fatality, injury or illness that (1) is work-related, (2) is a new case and not a continuation of an old case, and (3) meets one or more of the general recording criteria in section 1904.7 or additional criteria for specific cases in sections 1904.8 through 1904.11. In order for the case to be recordable, it must meet *all* three conditions.

Section 1904.6(b)(3) states that employers must follow the recommendation provided by a health care provider when determining whether an injury/illness is a new case or a recurrence.

However, evaluation under section 1904.6(b)(3) only applies when the employee has previously experienced a recorded injury or illness of the same type that affects the same part of the body.

We note from your scenario that the employee has no history of knee problems, and no previous OSHA recorded injury associated with his left knee. Therefore, the injury is clearly a "new case," and evaluation by a PLHCP under section 1904.6(b)(3) is not necessary.

**Question 3**: In the preamble to the final rule, OSHA states that it does require the employer to follow any determination a physician or other licensed health care professional has made about the status of a new case. That is, if such a professional has determined that a case is a new case, the employer must record it as such. Is the inverse true? That is, if the health care professional has determined that a case is not a new case, must the employer not record it?

**Response 3**: 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 previously 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 recordable 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 caused the injury or illness, or its signs or symptoms to reappear. Paragraph (b)(3) makes clear that for purposes of determining whether an injury or illness is or is not a new case, employers are to follow the guidance provided by a health care professional. Section 1904.6(b)(3) goes on to provide that in

case on the most authoritative (best documented, best reasoned, or most persuasive) evidence or recommendation.

As noted above, under your scenario, the employee did not experience a previously recorded injury of the same type that affects the same part of the body. Therefore, the knee injury described in your scenario is a new case.

**Question 4**: In the scenario above, if the clinic physician who originally treated the employee for the knee pain had determined or documented that the knee pain was due to a work-related injury, would the second physician's opinion be considered "contemporaneous" for recordkeeping purposes?

**Response 4**: The concept of "contemporaneous" conflicting medical opinions is not applicable to decisions regarding work-relatedness. OSHA's recordkeeping regulation allows an employer to seek and consider advice from one or more PLHCPs when determining whether an injury or illness is work-related. However, the employer has the ultimate responsibility for determining work-relatedness based on the rules set forth in section 1904.5.

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 responses to new information. To keep appraised of such developments, you can consult OSHA's website at http://www.osha.gov.

Sincerely,

John Hermanson, Acting Director
Directorate of Evaluation and Analysis

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