Standard Interpretations

02/06/2007 - Whether to record injuries that occur to a contract employee when traveling from an offshore manned platform complex to other downfield fixed platforms.

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- **Standard Number:** 1904; 1904.5(a); 1904.5(b)(1); 1904.5(b)(2); 1904.5(b)(6); 1904.5(b)(6)(i) ; 1904.31

This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any situation not delineated within the original correspondence.

Mr. Jack Amberg
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Dear Mr. Amberg:

Thank you for your letter of May 31, 2005 concerning the Occupational Safety and Health Administration's (OSHA's) injury and illness recordkeeping requirements at 29 CFR Part 1904. You requested specific guidance on whether to record injuries that occur to a contract employee when traveling from an offshore manned platform complex to other downfield fixed platforms.

I assume you realize that the Occupational Safety and Health Act, and therefore OSHA's recordkeeping regulation at 29 CFR Part 1904, apply only within the jurisdictional boundaries of the United States and certain location listed in Section 4(a), 29 USC §653(a) of the Act.

I will also assume that for purposes of the scenario described below, you are aware that 29 CFR Part 1904 requires a host employer to record the recordable injuries and illnesses of contract employees who are supervised on a day-to-day basis, even if such employees are not carried on the employer's payroll. Day-to-day supervision occurs when "in addition to specifying the output, product or result to be accomplished by the person's work, the employer supervises the details, means, methods, and process by which the work is to be accomplished." See, 29 CFR Part 1904.31.

Scenario: A contractor crew travels from its onshore home to a BP offshore manned platform complex. As part of the contract, the crew is provided with living accommodations at the BP facility.

One morning, a contract employee leaves the main platform complex and travels by company (host employer) workboat downfield to perform work activities at two separate fixed platforms. At the end of the day, after all assigned work duties have been completed, the contract employee is transported by the same company workboat back to the main complex platform. Just before being transferred to the main complex platform (a process which involves the use of either a crane with a personal basket or swing rope from the platform

complex), the contract employee exits the workboat's cabin and twists his ankle. The injury results in medical treatment and subsequent restricted work.

Question 1: Is the case recordable if, at the time of the injury on the workboat, the contract employee had completed all of his assigned work duties for the day? Assume the worker was still being paid and "on the clock" at the time of the injury. In such a case, is the determining factor that he is being paid, or that he had no further "assigned duties"?

Response 1: Section 1904.5(a) provides that an injury or illness must be considered work-related if an event or exposure in the work environment caused or contributed to the injury or illness or significantly aggravated a pre-existing injury or illness. Section 1904.5(b)(1) defines the work environment as the establishment and other locations where one or more employees are working or are **present as a condition of their employment**. In addition to physical locations, the work environment includes equipment or materials used by an employee in the course of work. Work-relatedness is presumed under Part 1904 for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Section 1904.5(b)(2) specifically applies.

Under Part 1904, if an employee is taking part in an activity and is either working or present as a condition of employment, he or she is in the work environment and any injury or illness that arises is presumed to be work-related and must then be evaluated for its recordability under the general recording criteria. 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 does not affect the outcome when determining the work-relatedness of an injury or illness. See OSHA's Frequently Asked Questions (FAQ) 5-11.

Question 2: A worker establishes a temporary residence and travels by workboat to a single fixed work site and returns back to the temporary residence at the end of the day. When traveling back to the temporary residence, the worker sustains an injury resulting in medical treatment. Is this injury exempted under Section 1904.5(b)(6)(i)?

Response 2: Section 1904.5(b)(6) provides that injuries and illnesses that occur to an employee while on travel status are work-related if, at the time of the injury or illness, the employee was engaged in work activities "in the interest of the employer." However, when an employee on travel status checks into a hotel, motel, or other temporary residence, he or she is considered to have established a "home-away-from-home." In such cases, the employee's activities must be evaluated in the same manner as an employee who leaves work and is essentially "at home." See, 29 CFR 1904.5(b)(6)(i).

For purposes of Part 1904 recordkeeping, all injuries and illnesses occurring at housing sites owned, managed, or controlled by employers and furnished to employees as a condition of employment are considered work-related, and such injuries and illnesses must be recorded if they meet the recording criteria in Part 1904. OSHA considers the furnishing of housing accommodations by employers to employees to be a "condition of their employment" when (1) employees are required by the employer to use them or (2) are compelled by the practical realities of the employment situation to use them. This means that employer-provided living accommodations are considered a condition of employment when there is an employer policy or contractual agreement that the employee reside at the employer-furnished housing, or a practical, economical, geographical, or physical necessity leading to the same result. However, if housing made available by the employer is accepted by the employee voluntarily, for example, on a normal landlord-tenant base, and in preference to other reasonably-available facilities, such housing would not constitute a condition of employment.

The offshore platform described in your letter, where the employee temporarily resides, would not be considered a home-away-from-home for purposes of the exception in Section 1904.5 (b)(6)(i) because employees are present at that facility as a condition of their employment. Also, employees reside at the offshore oil platform because there is no reasonable alternative, given the distance from residential facilities. Moreover, unlike traditional hotels, motels, or temporary residence, the housing accommodations at the oil platform are controlled by the employer, and the employer is responsible for assuring safe and healthful conditions there, as required by various OSHA standards.

Because the employer-furnished living accommodations, the temporary residence in your scenario is not a "home-away-from-home." Travel conducted between the employer-provided temporary residence and the fixed worksite would not be considered the employee's normal commute from home to work. Instead, such travel would be considered a work activity in the interest of the employer. As noted above, Section 1904.5(b)(6) provides that injuries and illness that occur while an employee is on travel status are work-related if the employee was engaged in work activities "in the interest of the employer."

Question 3: Based on the same facts outlined in question two, would it matter if the employee was traveling from the temporary residence to multiple work sites?

Response 3: Again, because the employer-furnished living accommodations in your scenario, the temporary residence is not a "home-away-from-home." Travel to multiple work sites would not be considered the employee's normal commute from home to work. Instead, such travel would be considered a work activity in the interest of the employer. As noted above, Section 1904.5(b)(6) provides that injuries and illness that occur while an employee is on travel status are work-related if the employee was engaged in work activities "in the interest of the employer."

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. In addition, 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 feel free to contact OSHA's Recordkeeping Section at (202) 693-1876.

Sincerely,

Keith L. Goddard, Director
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