Standard Interpretations

02/06/2007 - Whether to record injuries that occur to employees who travel from an offshore manned platform complex or dock to other offshore 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)

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

February 6, 2007

Mr. Brandon Muffoletto
3508 Curtis Lane
PO Box 9406
New Iberia, LA 70562-9406

Dear Mr. Muffoletto:

Thank you for your March 24, 2006 letter concerning the Occupational Safety and Health Administration's (OSHA's) injury and illness recordkeeping requirements of 29 CFR Part 1904. You requested specific guidance on whether to record injuries that occur to employees who travel from an offshore manned platform complex or dock to other offshore 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.

Question 1: Employees are working on an offshore oil platform and living on a separate offshore platform. The employees travel back and forth between the two offshore platforms by boat. Employees get on the boat by means of an offshore platform personnel basket and are injured in this process. Would this be considered not recordable due to commuting from an established home-away-from-home to the designated workplace?

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.

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 basis 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 in your scenario are not a "home-away-from-home," travel conducted between the two offshore oil platforms 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." As a result, for OSHA recordkeeping purposes, injuries and illnesses occurring on either the boat or personnel basket would be considered work-related.

Question 2: An employee travels by car from his permanent home to a dock and parks his car in a parking lot. The employee then takes a boat from the dock to an offshore platform, which is both the employee's worksite and temporary housing. The employee works and lives at the offshore platform for 7 to 14 days and returns to his permanent home. In the process of traveling on the first day of his assignment, the employee is injured while walking down a stairway leading from the onshore dock to the boat. Would this case be considered not recordable because the employee is still in the process of commuting to the workplace?

Response 2: The answer to you question will depend on the specific facts surrounding the injury, including whether the parking lot, dock, and stairway are part of the work environment for purposes of Part 1904. Specifically, the determination as to whether the case described in your letter is work-related will depend on whether the employee was still in his or her normal commute from home to work at the time of the injury.

The preamble to the final rule revising OSHA's Part 1904 regulation provides that injuries and illnesses that occur during an employee's normal commute to and from work are not considered work-related, and, therefore, are not required to be recorded. See, 66 *Federal Register* 5916 at 5960, Friday, January 19, 2001. For purposes of Part 1904, the employee's normal commute from home to work ends once he or she arrives at the work environment or when he or she starts traveling "in the interest of the employer." As noted above, Section 1904.5(b)(6) states that injuries and illnesses that occur while the employee is on travel status are work-related if the employee is engaged in work activities "in the interest of the employer."

We note that your letter explained that the employee drove from his or her home to a parking lot before sustaining the injury on the stairway leading to the boat. Under Part 1904, company parking lots are part of the employer's premises and, therefore, part of the establishment. These areas are under the control of the employer, i.e., those parking areas where the employer can limit access (such as parking lots limited to employees and visitors). On the other hand, parking areas where the employer does not have control, such as parking shared by different employers or public parking, would not be considered part of the employer's establishment and, therefore, not a company parking lot. See *OSHA's Injury and Illness Recordkeeping Frequently Asked Questions* 5-10. As a result, if the area described in your letter is a "company parking lot," the employee's normal commute would have ended before the injury occurred, and the injury is work-related.

Moreover, even if the area described in your letter is not a company parking lot for purposes of Part 1904, for example, a public parking lot, the injury still will be work-related if the dock or stairway leading to the boat is part of the work environment. As with the company parking lot described above, if the dock and/or stairway are part of the work environment, the injury on the stairway will be considered work-related. However, if the parking lot, dock, and stairway are not under the control of the employer, such as a public facility, the injury will not be work-related and not recordable under Part 1904.

Question 3: Employees are working on an offshore platform and are living on a boat. After completing the work day, employees are being transferred by personnel basket onto the boat. If employees are injured during this transfer, would the case be considered not recordable due to the commute from a designated workplace to the established home?

Response 3: As noted above, if the employees are residing on the boat as a condition of their employment, either because of employer policy or contractual agreement, or because of practical necessity, the "home-away-from-home" exception in Section 1904.5(b)(6)(i) would not apply.

Section 1904.5(b)(1) provides that the work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work. OSHA would consider the personnel basket described in your letter, used to transport employees on and off the offshore platform, to be part of the "work environment." The personnel basket attached to the offshore platform is under the direct control of the employer, and the employer is responsible for assuring the safe operation of such equipment as provided by the OSHA standards. As a result, because the personnel basket is part of the work environment, an injury or illness taking place on such a device would be considered work-related.

If the employees are not residing on the boat as a condition of their employment or because the boat is their permanent home, it is possible that injuries and illnesses occurring during the "commute" to and from the platform will not be considered work-related. In other words, under certain circumstances, the exception in Section 1904.5(b)(6)(i) could potentially apply to the boat. However, as noted above, OSHA considers the personnel basket attached to the offshore platform to be part of the work environment. Therefore, any potential "commute" to work would end once the employee climbs off the boat and into the personnel basket. Likewise, any potential commute home would not start until after the employee leaves the personnel basket and climbs into the boat. As a result, any injuries taking place on the personnel basket described in your letter would be considered work-related and must be recorded if they meet the recording criteria in Part 1904.

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 contact OSHA's Recordkeeping Section at (202) 693-1875.

Sincerely,

Keith L. Goddard, Director
Directorate of Evaluation and Analysis

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Occupational Safety & Health Administration
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Washington, DC 20210