Standard Interpretations

02/09/2009 - Determining work-relatedness for recordkeeping of injury resulting from horseplay.

Standard Interpretations - Table of Contents

- **Standard Number:** 1940.4(a) ; 1904.5(a); 1904.5(b)(1); 1904.5(b)(2); 1904.5(b)(2)(v)

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 9, 2009

Mr. Joe Winkelman
Regional Contractors Alliance, LLC
BP Whiting Business Unit
2815 Indianapolis Boulevard Mail Code 002
Whiting, IN 46394

Dear Mr. Winkelman:

Thank you for your December 2, 2008, letter to the Occupational Safety and Health Administration (OSHA) regarding the Recordkeeping regulation found at 29 CFR Part 1904. Specifically, you requested guidance from OSHA on a case regarding "horseplay."

Scenario: In your letter, you describe an instance where two of your supervisors had completed their work for the day and had entered the change trailer to change clothes and proceed home. There was some bantering back and forth concerning how to beat the traffic at shift's end. The discussion escalated into a physical confrontation where one supervisor allegedly pulled a knife and struck the other in the right bicep, causing a laceration that required sutures to close.

Issue: You have asked OSHA to endorse your contention that, because the work environment did not contribute to the "horseplay gone badly," as you described the situation, the injury was not work-related and thus was non-recordable under OSHA regulations.

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). We assume that the supervisors were in the change trailer as a part of their

work or as a condition of their employment. If our assumption is correct, the injury resulted from an event (the altercation between the two supervisors) occurring in the work environment and was thus work-related. When a work-related injury requires treatment beyond first aid, it is recordable unless it falls within one of the §1904.5(b)(2) exceptions to the geographic presumption.

Violence in the workplace does not generally qualify as an exception. OSHA's Frequently Asked Question 5-2 (found at http://osha.gov/recordkeeping/detailedfaq.html#1904.4) provides guidance on this issue:

> **Question 5-2: Are cases of workplace violence considered work-related under the new Recordkeeping rule?**
>
> The Recordkeeping rule contains no general exception, for purposes of determining work-relationship, for cases involving acts of violence in the work environment. However, some cases involving violent acts might be included within one of the exceptions listed in section 1904.5(b)(2). For example, if an employee arrives at work early to use a company conference room for a civic club meeting and is injured by some violent act, the case would not be work-related under the exception in section 1904.5(b)(2)(v).

Furthermore, 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, such as horseplay. See the preamble to the final rule (66 *Fed. Reg.* 5916, 5929 (Jan. 19, 2001)).

Applying these principles to your situation, it is OSHA's position that the injury was work-related and required medical treatment beyond first aid. This is so whether the incident leading to the injury is characterized as horseplay or as workplace violence, neither of which is covered by any exception to the geographic presumption. Therefore, the injury is recordable.

Both the Note to Subpart A of the regulation (29 CFR §1904.0) and the Overview to OSHA Form 300 (http://osha.gov/recordkeeping/new-osha300form1-1-04.pdf) expressly state that recording a case does not indicate that an employer or employee was at fault or that an OSHA standard was violated. In addition, OSHA recognizes that injury and illness rates do not necessarily indicate an employer's lack of interest in safety and health. Recording a case indicates only three things: (1) that an injury or illness has occurred; (2) that the employer has determined that the case is work-related (using OSHA's definition of that term); and (3) that the case is non-minor, i.e., that it meets one or more of the OSHA injury and illness recording criteria. See 66 *Fed. Reg.* at 5933.

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.

Sincerely,

Keith Goddard, Director
Directorate of Evaluation and Analysis

Standard Interpretations - Table of Contents

Back to Top www.osha.gov www.dol.gov

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