

Standard Interpretations

/ Determining whether to record an employee's injury that involved both work-related and non-work-related incidents.

▪ **Standard Number:** 1904.5

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

March 17, 2021

Mr. Brad T. Hammock

Little Mendelson, PC

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Tysons Corner, Virginia 22102

Dear Mr. Hammock:

Thank you for your 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. Specifically, you request clarification on whether to record an employee's injury that involved both work-related and non-work-related events and exposures.

Scenario: Your letter states that an employee experiences pain and swelling in the elbow area while pushing on a pipe wrench at the worksite on a Friday afternoon. The employee reports the pain and swelling at the end of his shift and is referred to a health care professional who recommends the employee follow certain first-aid treatments listed in 29 CFR 1904.7(b)(5)(ii). The health care professional does not recommend any work restrictions as a result of the reported work-related injury.

The following day and through the weekend, the employee reports for military exercises. As part of these exercises, the employee is required to complete a "Combat Physical Test," which involves completion of several physical fitness exercises. One of the exercises included in the test requires the employee to lift 30-pound weights overhead 100 times. The employee is able to finish the Combat Physical Test and complete additional responsibilities over the weekend, although he indicates that his arm was "really hurting" after the 30-pound lifts.

The following Monday the employee is not scheduled to work. On Monday evening, the employee requests to be seen again by a health care professional, which occurs on Tuesday. Given the events of the weekend, the health care professional places the employee on restricted duty beginning that day. However, the health care professional is unable to state definitively if the employee would have needed work restrictions absent his participation in the Physical Combat Test.

Question: Would the work restrictions placed on the employee after the non-work-related events of the weekend make this a recordable injury?

Response: OSHA's recordkeeping regulation at section 1904.5(a) provides that an employer "must consider an injury or illness to be 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 injury or illness. Work-relatedness is presumed 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 this language, an injury or illness is presumed work-related if, and only if, an event or exposure in the work environment is a discernible cause of the injury or illness or a significant aggravation to a pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause. See, the settlement agreement between OSHA and the National Association of Manufacturers, 66 Fed. Reg. 66943 (Dec. 27, 2001).

Section 1904.5(b)(3) states that if it is not obvious whether the precipitating event or exposure occurred in the work environment or elsewhere, the employer "must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment caused or contributed to the resulting condition or significantly aggravated a pre-existing condition." This means that the employer must determine whether it is more likely than not that work events or exposures were a cause of the injury or illness, or of a significant aggravation to a pre-existing condition. If the employer decides that an injury or illness is not work-related, and OSHA subsequently issues a citation for failure to record, the Government would have the burden of proving that the injury or illness was work-related.

In the specific scenario described above, it appears that the employee's injury is recordable given that a work event – pushing on a pipe wrench – was one discernable cause of the injury. As noted above, a work event need not be the sole or predominant cause of a work injury for it to be recordable. See 66 Fed. Reg. 66943, 66944. Work-relatedness is presumed for OSHA recordkeeping purposes if work makes "any" contribution to the resulting injury or illness.

Although this injury appears to be recordable, the employer should evaluate the employee's duties and work environment to determine whether an event or exposure in that environment contributed to the injury. Under the OSHA recordkeeping system, the employer has the ultimate responsibility for making good-faith recordkeeping determinations regarding an injury and/or illness. Employers must decide if and how a particular case should be recorded, and their decision must not be arbitrary.

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

Sincerely,

Lee Anne Jillings, Acting Director
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