

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the attention of:



MAR 20 2007

Mr. William K. Principe
Constangy Brooks & Smith, LLC
Suite 2400
230 Peachtree Street, NW
Atlanta, GA 30303-1557

Dear Mr. Principe:

Thank you for your letter dated June 16, 2006, to the Occupational Safety and Health Administration (OSHA) regarding the Injury and Illness Recording and Reporting Requirements contained in 29 CFR Part 1904. Specifically, you requested guidance from OSHA on whether to record injuries sustained by two employees during a fist fight in the company parking lot that occurred before the employees started their shift.

In your letter, you describe a scenario where two employees are injured after engaging in a fist fight in the company parking lot. The incident took place before the start of a shift and before either employee had "clocked-in." Your letter notes the exception in Section 1904.5(b)(2)(v), which provides that an injury or illness is not work-related if such injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours. Your letter goes on to ask whether fighting is considered a "personal task," and requests clarification of the phrase "assigned working hours."

Response:

Section 1904.5 sets out the requirements employers must follow in determining whether an injury or illness is work-related. Paragraph 1904.5(a) states that; an injury or illness must be considered work-related if an event or exposure in the work environment either caused or contributed to the injury or illness or significantly aggravated a pre-existing condition. For OSHA recordkeeping purposes, a work relationship is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exemption listed in Section 1904.5(b)(2) specifically applies.

The exception in Section 1904.5(b)(2)(v) allows employers limited flexibility to exclude from the recordkeeping system situations where the employee is using the employer's establishment for purely personal reasons during his or her off-shift time. For example, if an employee were using a meeting room at the employer's establishment outside of his or her assigned working hours to hold a meeting for a civic group to which he or she belonged, and slipped and fell in the hallway, the injury would not be considered work-related. On the other

hand, if the employee were at the employer's establishment outside his or her assigned working hours to attend a company business meeting or a company training session, such a slip or fall would be work-related.

Under the exception in Section 1904.5(b)(2)(v), a case will not be considered work-related if (1) the injury or illness is solely the result of the employee doing personal tasks, unrelated to employment, and (2) the injury or illness occurs outside the employee's assigned working hours. In order for this exception to apply, the case must meet **both** of the stated conditions. If the injury or illness is work-related, and meets the general recording criteria in Section 1904.7, the case must be recorded.

OSHA does not consider fighting or acts of violence in the work environment to be a "personal task" for purposes of the exception in Section 1904.5(b)(2)(v). In the preamble to the final rule revising the Part 1904 recordkeeping requirements, OSHA addressed the issue of whether to exclude injuries and illnesses resulting from "illegal activities and horseplay" in the workplace. OSHA stated in the preamble that excluding these types of injuries and illnesses would be inconsistent with OSHA's longstanding reliance on the geographic presumption to establish work-relatedness. The Agency stated that many of the working conditions concerning illegal activities and horseplay involve occupational factors, such as the effectiveness of disciplinary policies and supervision. Recording such incidents may serve to alert the employer and employees to workplace safety and health issues. See 66 Fed. Reg. 5956, January 19, 2001. See also, 66 Fed. Reg. 5959, which states: (If an injury results from an assault or an incidence of horseplay at work, the geographic presumption applies and the case is work-related unless it otherwise falls within an exception).

For purposes of Section 1904.5(b)(2)(v), "assigned working hours" means those hours the employee is actually expected to work, including overtime. See, OSHA's Frequently Asked Question 5-4. As noted above, unless a specific exception applies, all injuries and illnesses in the work environment are presumed to be work-related. 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 Question 5-11.

OSHA considers the company parking lot/access roads to be part of the employer's establishment. See 66 Fed. Reg. 6076, and OSHA's Frequently Asked Question 5-10. However, some specific injuries and illnesses occurring in company parking lots/access roads are not considered work-related, such as injuries resulting from motor vehicle accidents during the employee's commute to or from work or running personal errands in their motor vehicle. See 66 Fed. Reg. 6076. Other injuries or illnesses in company parking lots/access roads, including those resulting from fighting or assaults, are considered work-related, and must be recorded if they meet the general recording criteria.

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 the Division of Recordkeeping Requirements at 202-693-1876.

Sincerely,

A handwritten signature in dark ink, appearing to read "Keith L. Goddard". The signature is fluid and cursive, with the first name "Keith" and last name "Goddard" clearly distinguishable.

Keith L. Goddard, Director
Directorate of Evaluation and Analysis