



Reply to the attention of:

MAR 22 2011

Mr. William K. Principe  
Suite 2400  
230 Peachtree St., NW  
Atlanta, GA 30303-1557

Dear Mr. Principe:

Thank you for your October 6, 2010, 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. In an effort to provide the public with prompt and accurate responses, we developed and continue to refine a set of Frequently Asked Questions (FAQ), in addition to maintaining a log of Letters of Interpretation (LOI) on the OSHA Recordkeeping web site.

**Scenario:**

Your letter states that an employee incurred a work-related injury on a Saturday, but did not think it was severe enough to see a doctor. He was not scheduled to work on Sunday, but did report to work at his assigned time on Monday. After working six hours, the employee left work and sought treatment at an emergency room for the injury from Saturday. After receiving treatment, the emergency room physician released the employee to return to work the next day (Tuesday), which was the employee's next normally scheduled workday, with work restrictions. The company agreed to accommodate the work restrictions.

On Tuesday, prior to his next shift, the employee contacted the employer and stated that he was in so much pain he needed to see a doctor right away. The employee requested to use a bonus holiday (similar to a vacation day) for that day (Tuesday). The employer approved the request, and the employee saw the doctor and was again released to return to work with restricted duty. However, because the employee had already been approved to take a bonus holiday, he did not return to work until the next day (Wednesday).

**Question 1:**

Is the absence on Tuesday recordable on the OSHA 300 Log as a day away from work or just as a day of restricted work?

**Response 1:**

Section 1904.7(b)(3) provides that work-related injuries and illnesses involving one or more days away from work must be recorded on the OSHA Log. Section 1904.7(b)(3)(iii) goes on to state that if a physician or other licensed health care professional recommends the employee can return to work, but the employee stays at home, the case does not have to be recorded as days away.

Section 1904.7(b)(4)(i) provides that a work-related injury or illness must be recorded on the OSHA Log as restricted work activity if the employer assigns restricted work, or a physician or other licensed health care professional recommends restricted work. The preamble to the January 19, 2001, final rule revising OSHA's recordkeeping regulation states that employer's must follow the recommendation of a physician or licensed health care professional. See, 66 Federal Register 5969. Under OSHA's recordkeeping system, an employee does not make the determination as to whether he or she is placed on restricted work. Instead, the employer ultimately decides whether the physician's recommendation affects the employee's "routine job functions" and therefore is "restricted work activity."

In the scenario described above, the physician recommended that the employee could return to work with restricted work duties. However, the injured employee decided not to return to work until Wednesday. Therefore, the day in question (Tuesday) should be recorded as a day of restricted work activity.

Additionally, please know that OSHA does not consider time spent traveling to and from medical evaluations as either days away from work or restricted work activity. Instead, the focus is on whether the injured or ill employee needs days away from work or restricted work activity to recuperate from the work-related injury or illness. Classification of the day off as a "bonus holiday" is not relevant to this determination.

**Question 2:**

Does it make a difference if the employer tells the employee that he has been released to return to work with restricted work and can take the day off, but only as an unexcused absence?

**Response 2:**

You must count the number of calendar days the employee was unable to work (days away or restricted work activity) as a result of the injury or illness. If the employer determines that the employee needed time off because of their severe pain and was unable to work, the case should be recorded as a day away from work. On the other hand, if the employer determines that the injured employee was able to come to work, and perform restricted work, the case should be recorded as restricted work activity.

**Question 3:**

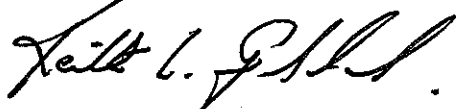
Would it make a difference if the employee did not see the doctor on the Tuesday he took the day off?

**Response 3:**

Again, if the employee had not seen the doctor on Tuesday, that day should be counted as a day away from work if the employer determines the employee cannot work because of the injury.

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. Also, from time to time we update our guidance in responses to new information. To keep appraised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith L. Goddard". The signature is written in a cursive style with a large initial "K".

Keith L. Goddard, Director  
Directorate of Evaluation and Analysis