U.S. Department of Labor

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

Reply to the attention of:

MAR 0 8 2007

Mr. John Klein
Vice President
DC Concrete Co.
Lanken Enterprise Inc.
14168 Central Ave, Unit A
Chino, CA 91710

Dear Mr. Klein:

This is in response to your September 30, 2005 letter concerning the Occupational Safety and Health Administration's (OSHA's) injury and illness recordkeeping requirements at 29 CFR 1904.

Your letter described the scenario below and requested an OSHA interpretation based on the provisions in Part 1904:

> "DC Concrete had an accident in which an employee fractured his hand. At the medical facility, per company policy, the employee was drug tested. The employee failed the drug test, a violation of policy and all terms of employment.
>
> Per section 1904.5(b)(2)(vi) this accident should be classified as self-medication and thus not recordable on the OSHA 300 log."

Section 1904.5(a) provides that an injury or illness is considered 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 condition. Work-relatedness is established by the fact that the injury or illness would not have occurred but for the conditions and obligations of employment that placed the employee in the position in which he or she was injured or made ill. For purposes of Part 1904, work-relatedness is presumed, unless an exception in Section 1904.5(b)(2) specifically applies.

Section 1904.5(b)(2)(vi) states that injuries and illnesses will not be considered work-related if they are solely the result of personal grooming, self-medication for a non-work-related condition, or are intentionally self-inflicted. The exception of "self medication for a non-work-related condition" addresses situations such as when an employee has a negative reaction to a medication brought from home to treat a non-work condition. See, 66 Federal Register 5951. This event would not be considered a work-related illness, even though it first manifested at work. The injury described in your letter does not fit within the exception set forth at 1904.5(b)(2)(vi).

Additionally, during the rulemaking revising OSHA's recordkeeping requirements, several commenters suggested including an exception in Part 1904.5 for injuries and illnesses

resulting from employees engaging in illegal activities, horseplay, or failing to follow established work rules or procedures. OSHA explained in the preamble to the final rule that it was rejecting this proposed exception because it was inconsistent with the Agency's longstanding reliance on the geographic presumption to establish work-relatedness. Further, OSHA stated that many of the working conditions addressed by the proposed exception involve occupational factors, such as the effectiveness of disciplinary policies and supervision. Thus, recording such incidents may serve to alert both the employer and employees to workplace safety and health issues. See, 66 Federal Register 5958.

Based on the above, the injury described in your letter is recordable if it meets one of the recording criteria set forth in Part 1904.7.

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 Office of Statistical Analysis, at (202) 693-1875.

Sincerely,

Keith L. Goddard

Keith L. Goddard, Director
Directorate of Evaluation and Analysis