• **Standard Number:** 1904.5; 1904.5(b)(2)(iv)

April 22, 2010

Mr. James Goodwyne
Incident Management Gatekeeper
150-C North Dairy Ashford, #C-480
Houston, TX 77079

Dear Mr. Goodwyne:

Thank you for your recent 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 you 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 website.

You specifically ask for guidance regarding the exception to work-relatedness in 1904.5(b)(2).

Scenario: An employee had an allergic reaction (food allergy) at a company provided lunch while attending a meeting. The employee was taken by ambulance to a hospital where treatment was received from a health care professional. There was no evidence of food contamination and no other employees became ill.

Response: 1904.5(b)(2)(iv) states that an injury or illness which is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer's premises or brought in) is not considered work-related. It further states this exception does not apply if the food is supplied by the company and the employee contracts food poisoning.

While the company supplied the lunch for a meeting, the resulting illness was from an allergic reaction and was not food poisoning. Therefore, the exception in 1904.(b)(2)(iv) applies and the case is not recordable on the OSHA Log.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. 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 only of the requirements discussed and may not be applicable to any question not delineated within your original correspondence. 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 http://www.osha.gov.

Sincerely,

Keith Goddard, Director
Directorate of Evaluation and Analysis

U.S. Department of Labor

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

Reply to the attention of:

MAY - 5 2010

COPY

Mr. Corby Autin
President
A&E Compliance Solutions, LLC
P.O. Box 475
Galliano, LA 70354

Dear Mr. Autin:

Thank you for your February 12, 2010 letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping regulation contained in 29 CFR Part 1904 – Recoding and Reporting Occupational Injuries and Illnesses. In an effort to provide you 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.

Your letter states that your client had an employee that was injured on the job and the employee was released by a physician without any lost or restricted time, did not receive any prescriptions, injections or stitches. X-rays were negative and the employee returned to work and continued working without any complaints of pain or treatment for the injury. The employee recently took medical leave and claims it was due to the incident that occurred several months ago.

Question: Can my client take the position that there was no lost time from the incident and that the current condition giving rise to a medical leave is either from an undetermined event or pre-existing condition and therefore not a recordable incident?

Response: Under Section 1904.7(a) OSHA states: "You must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. You must also consider a case to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness."

The employer is required to base his or her recordkeeping decision on the direction of a Health Care Professional (HCP) in regards to days away from work and restricted work activity. See sections 1904.7(b)(3)(ii) and (iii); and 1904.7(b)(4)(viii). In your scenario you indicate a physician released the employee to full duty the day of the injury. You must evaluate the case using the physician's direction. Unless there is evidence indicating the employee's condition was made worse by additional occupational exposure, the case need not be recorded. If additional exposure worsened the employee's condition and the employee was directed to take leave for recuperation by the employer or an HCP, the case must be recorded.

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 response to new information. To keep appraised of such developments, you can consult OSHA's website at http://www.osha.gov.

Sincerely,

Keith Goddard, Director
Directorate of Evaluation and Analysis