



U.S. Department of Labor Occupational Safety & Health Administration

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Standard Interpretations

04/03/2007 - Recording an injury when employer is provided with different medical opinions.

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

This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any situation not delineated within the original correspondence.

April 3, 2007

Mr. Orpha B. Thomas, President
Thomas Safety & Health Consulting, Inc.
1612 North Belmont Ave.
Arlington Heights, IL 60004

Dear Mr. Thomas:

Thank you for your July 1, 2005 letter regarding clarification of the Injury and Illness Recording and Reporting requirements contained in 29 CFR Part 1904. In your letter, you state that an employee tripped on the stairs and had a work-related injury. Your question is whether the plant can line out the lost workdays even though the initial medical evaluation at the Emergency Room released her to return to work with restrictions. You also stated that an independent medical review (third-party physician) performed on May 8th (24 days after the injury) was not in agreement with the initial medical opinion and stated that the employee could have been working with restrictions from the date of injury.

Scenario: On April 14, 2005, an employee fell on the steps at work and was diagnosed by an emergency room physician with an acute right wrist scaphoid fracture and acute left knee contusion. The employee was released from the emergency room and told she could return to work the following day (with restrictions) and referred to an orthopedic physician for follow-up. On April 18, 2005, the employee complained at work of pain in her left wrist. She had not complained of the wrist pain on April 14, and no x-rays of the left wrist had been taken during her initial visit to the emergency room.

On April 19, 2005, an orthopedic physician recommended "days away from work" until a bone scan could be conducted on April 26, 2005. The bone scan was conducted on April 26 and revealed no fracture of the left wrist. Later, on May 5, 2005 the orthopedic physician released the employee to return to work with restrictions. The company doctor provided medical documentation to a third-party physician on May 8, 2005, and that physician concluded that the protocol for treatment was not appropriate and that the employee could have been working since the onset of the injury.

Response: Under 1904.5 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 (presumption of work-relationship) 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.

When making an injury or illness recordkeeping decision, an employer may use the opinion of a contemporaneous second provider if the employer believes the second opinion is more authoritative. However, once the employee was given "Days away from work" by the treating physician, this becomes a recordable injury. Even though the bone scan on 4/26 showed no fracture occurred, this must be treated as "Days away from work." This is consistent with OSHA's [Frequently Asked Question 7-10a](#) and OSHA's [Letter of Interpretation dated March 19, 2003](#) — Results of an MRI do not negate the recordability of a physician's recommendation.

This injury should have first been recorded on 4/14/05 as a "Job transfer or restriction" under Column (I) and the day count should be recorded under Column (L). Once the employee received "Days away from work", you need to "remove or line out" Column (I) and check Column (H) "Days away from work." The employer should stop count for Column (L) "On job transfer or restriction" on 4/19/05 and start counting for Column (K) "Away from work." Once the employee is returned to restricted work on 5/3/05, you need to stop the count for "Away from work" and resume counting for "On the job transfer or restriction" until the employee is able to resume all of their job functions.

Please note the following Frequently Asked Question addressing conflicting medical recommendations:

Question 7-10a - If a physician or other licensed health care professional recommends medical treatment, days away from work or restricted work activity as a result of a work-related injury or illness can the employer decline to record the case based on a contemporaneous second provider's opinion that the recommended medical treatment, days away from work or work restriction are unnecessary, if the employer believes the second opinion is more authoritative?

Yes. However, once medical treatment is provided for a work-related injury or illness, or days away from work or work restriction have occurred, the case is recordable. If there are conflicting contemporaneous recommendations regarding medical treatment, or the need for days away from work or restricted work activity, but the medical treatment is not actually provided and no days away from work or days of work restriction have occurred, the employer may determine which recommendation is the most authoritative and record on that basis. In the case of prescription medications, OSHA considers that medical treatment is provided once a prescription is issued.

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 apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please contact OSHA's Recordkeeping Section at (202) 693-1875.

Sincerely,

Keith L. Goddard, Director

Directorate of Evaluation and Analysis

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