

Reply to the attention of:



MAY 10 2006

Mr. Dimitrios Mihou, CSP
Director Personnel Safety
Constellation Energy
P.O Box 63
Lycoming, NY 13093

Dear Mr. Mihou:

This is in response to your letter dated January 27, 2006. In your letter you presented the six scenarios listed below and requested clarification of how the exceptions to work-relatedness contained in 29 CFR Part 1904.5(b)(2) apply to those scenarios.

1. An employee arrives to work prior to his or her assigned working hours to utilize the company's wellness facility strictly on a voluntary basis and slips in the company owned parking lot and sustains an injury.

Answer: This scenario is considered work-related. To meet the exception at 1904.5(b)(2)(v), the injury or illness must solely result from the employee doing the personal task. In the scenario above, the event of crossing the parking lot cannot solely be attributed to using the wellness facility. The employee would have crossed the parking lot to get to work regardless of his or her intent of first going to the wellness facility.

2. An employee arrives to work prior to his or her assigned working hours to utilize the company's wellness facility strictly on a voluntary basis and slips in the wellness center and sustains an injury.

Answer: This scenario is not considered work-related. It meets both criteria outlined in the exception at 1904.5(b)(2)(v); 1) the injury occurred prior to the employee's assigned working hours, and 2) the injury is solely the result of the employee performing personal tasks (he or she would not have been in the wellness facility otherwise).

3. An employee walks from his normal work location (during lunch break) to the dedicated wellness center building and falls on the sidewalk and injures him or herself.

Answer: This scenario is considered work-related. To meet the exception at 1904.5(b)(2)(v), the injury or illness must occur outside the employee's assigned working hours. Assigned working hours is considered all of the time between the start of the employee's work day and the end of the employee's work day. This includes lunch breaks and other formal and informal break times.

4. Employees have a wellness walking club that walks within the perimeter of the company property (during lunch break). In this scenario, if an employee falls on the sidewalk and injures him or herself, is this an OSHA recordable case?

Answer: This scenario is not considered work-related. It meets the criteria outlined in the exception at 1904.5(b)(2)(iii); the injury is the direct result of voluntary participation in a fitness activity.

5. An employee walks over to the dedicated smoking outbuilding for a smoke break and falls on the sidewalk and injures him or herself.

Answer: This scenario is considered work-related. To meet the exception at 1904.5(b)(2)(v), the injury or illness must occur outside the employee's assigned working hours. Assigned working hours is considered all of the time between the start of the employee's work day and the end of the employee's work day. This includes lunch breaks and other formal and informal break times.

6. What is the definition of assigned working hours and how does this affect OSHA recordable cases? For example, if an employee voluntarily stays over or comes to work before "assigned working hours" to complete a non-work-related civic project or other personal task and falls in the company owned parking lot and receives an injury.

Assigned working hours is considered all of the time between the start of the employee's work day and the end of the employee's work day. This includes lunch breaks and other formal and informal break times. This scenario is similar to Scenario 1 above and is considered work-related. To meet the exception at 1904.5(b)(2)(v), the injury or illness must solely result from the employee doing the personal task. In this scenario above, the event of crossing the parking lot cannot solely be attributed to finishing the civic project. The employee would have crossed the parking lot to get to work regardless of his or her intent of completing the personal task.

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>.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith L. Goddard", written in a cursive style.

Keith L. Goddard, Director
Directorate of Evaluation and Analysis