

U.S. Department of Labor

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



MAY 22 2008

Reply to the attention of:

COPY

Ms. D. Marie Williams More  
Comptroller  
Decorum Contemporary Home Furnishings  
301 w 21<sup>st</sup> Street  
Norfolk, VA 23517

Dear Ms. More:

Thank you for your January 2, 2008 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 web site. This information is publicly available and can be immediately retrieved from OSHA's web site at <http://www.osha.gov/recordkeeping>.

Your letter requests guidance on whether to record a case resulting from an incident that occurred at your worksite on December 11, 2007. According to your letter, one of your employees informed you by telephone that he had sustained an injury the previous evening when a delivery truck rolled from a parked position and pushed him into a warehouse gate. Your letter also indicates that although a security camera failed to capture the alleged accident, images taken shortly after the incident show that the employee had no visible signs of injury. The employee has remained out of work since the incident, has not filed a formal report with you regarding the matter, and has not visited a physician for treatment.

Under OSHA's recordkeeping regulation, if there is no evidence that an injury or illness exists, other than the employee's claim, you are not required to record the case on the OSHA 300 Log. This issue has been addressed in a Frequently Asked Question (FAQ) to OSHA's recordkeeping regulation available at [www.osha.gov](http://www.osha.gov).

***Question 4-1. Does an employee report of an injury or illness establish the existence of the injury or illness for recordkeeping purposes?***

No. In determining whether a case is recordable, the employer must first decide whether an injury or illness, as defined by the rule, has occurred. If the employer is uncertain about whether an injury or illness has occurred, the employer may refer the employee to a physician or other health care professional for evaluation and may consider the health care professional's opinion in determining whether an injury or

illness exists. [Note: If a physician or other licensed health care professional diagnoses a significant injury or illness within the meaning of §1904.7(b)(7) and the employer determines that the case is work-related, the case must be recorded.]

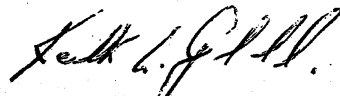
Section 1904.4 requires covered employers to record each fatality, injury or illness that is work-related, is a new case and not a continuation of an old case, and meets one or more of the general recording criteria in section 1904.7 or the additional criteria for specific cases found in sections 1904.8 through 1904.12. Under OSHA's recordkeeping system, the employer is the ultimate decision-maker as to whether a specific occupational injury or illness should be recorded on the OSHA Log. Based on the description in your letter, it does not appear that you have enough information to conclude that a recordable injury did in fact take place.

As you may know, the Commonwealth of Virginia administers and enforces its own occupational safety and health program under a plan approved and monitored by Federal OSHA. Under Section 1904.37(b)(1), State-Plan States must have the same requirements as Federal OSHA for determining which injuries and illnesses are recordable and how they are reported. For Part 1904 provisions other recording and reporting, State requirements may be more stringent than or supplemental to the Federal requirements. If you would like more information about Virginia's injury and illness recordkeeping requirements, you may contact:

Virginia Department of Labor and Industries  
Powers-Taylor Building  
13 South 13<sup>th</sup> Street  
Richmond, Virginia 23219-4101

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