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Thank you for your February 8, 2009 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. Your letter addressed issues related to an employee's development and mental illness while working at a Department of Energy (DOE) national laboratory. Your paraphrased questions and our responses are below. 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.

Background: We understand from your letter that a worker employed at a DOE national laboratory was diagnosed with mental illness. Prior to this diagnosis, the employee was treated by national laboratory health care professionals for work-related stress.

Immediately before the mental illness was diagnosed, the employee was reportedly harassed in the workplace by a co-worker. The employer investigated the harassment complaint and verified that the incident took place. The employer was informed later that the harassment was a contributing factor in the employee's mental illness.

The employer has not reported an injury or illness to DOE (who is responsible for recording injuries and illness at national laboratories), and the employer has not informed the employee about OSHA's requirements for reporting injuries and illnesses. Finally, we understand that the employee asked a medical professional at the national laboratory whether the illness was reportable, and was told that the employee needed to file a workers' compensation claim before the employer would report a workplace injury.

OSHA's regulation at Section 1904.5(b)(2)(ix) provides that an employer is not required to record a case if: "the illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training

and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related."

Question 1

Does Section 1904.5(b)(2)(ix) preclude the employer from initiating an injury investigation even if the employer has received credible notification from other than the employee's physician that an illness was related to events in the workplace?

Response 1

No, Section 1904.5(b)(2)(ix) (or any other section of the recordkeeping requirements) does not preclude the employer from initiating a safety and health investigation.

Question 2

Does an employer with credible notification that a mental illness was related to events in the workplace have an obligation to notify the employee of the requirements in Section 1904.5(b)(2)(ix)?

Response 2

There is no requirement in the recordkeeping regulation for employers to teach (or inform) employees about the details of the recording criteria. Therefore, there is no obligation to notify the employee of the specifications of Section 1904.5(b)(2)(ix).

Please be aware that Section 1904.35 establishes requirements for employers to involve their employees in the recordkeeping process. The following excerpts outline these requirements.

Section 1904.35(a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.

- (1) You must inform each employee of how he or she is to report an injury or illness to you.
- (2) You must provide limited access to your injury and illness records for your employees and their representatives.

Under the employee involvement provisions in Section 1904.35, employers are required to let employees know how and when to report work-related injuries and illnesses. This means that the employer must establish a procedure for the reporting of work-related injuries and illnesses and train its employees to use that procedure. The regulation does not specify how the employer must accomplish these objectives. The size of the workforce, employees' language proficiency and literacy levels, the workplace culture, and other factors will determine what will be effective for any

particular workplace. See the preamble to OSHA's January 19, 2001, final rule revising the recordkeeping regulation 66 Federal Register 6051.

The preamble to the final rule goes on to state:

OSHA has strengthened the final rule to promote better injury and illness information by increasing employees' knowledge of their employers' recordkeeping program and by removing barriers that may exist to the reporting of work-related injuries and illnesses. To achieve this goal, the final rule establishes a simple two-part process for each employer who is required to keep records, as follows:

- Set up a way for employees to report work-related injuries and illnesses promptly; and
- Inform each employee of how to report work-related injuries and illnesses.

See 66 Federal Register 6051.

Additionally, OSHA's Frequently Asked Questions to the recordkeeping regulation provide:

Question 35-1. How does an employer inform each employee on how he or she is to report an injury or illness? Employers are required to let employees know how and when to report work-related injuries and illnesses. This means that the employer must set up a way for the employees to report work-related injuries and illnesses and tell its employees how to use it. The Recordkeeping rule does not specify how the employer must accomplish these objectives, so employers have flexibility to set up systems that are appropriate to their workplace. The size of the workforce, employee's language proficiency and literacy levels, the workplace culture and other factors will determine what will be effective for any particular workplace.

Question 3

If an employer has credible knowledge of mental illness and the employee has not provided the employer with a written opinion from the employee's physician regarding such illness, is the employer required to: (1) make a report to OSHA; (2) initiate an injury investigation; and (3) discuss OSHA injury and illness reporting requirements with the employee?

Response 3

The recordkeeping regulation requires employers to record certain injuries and illness, once they receive knowledge of their occurrence, and to make the records available to employees. The rule also contains a requirement to notify OSHA of fatalities and

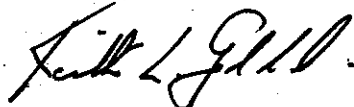
multiple hospitalizations. However, the regulation does not include any provision requiring employers to (1) notify OSHA of a case of work-related mental illness; (2) to initiate investigations; or (3) to discuss recordability with employees.

The regulation requires employers to record only those mental illnesses verified by a health care professional with appropriate training and experience in the treatment of mental illness, such as a psychiatrist, psychologist, or psychiatric nurse practitioner. The employer is under no obligation to seek out information on mental illnesses from its employees and employers are required to consider mental illness cases only when an employee voluntarily presents the employer with an opinion from the health care professional that the employee has a mental illness and that it is work related. See 66 Federal Register 5953.

Finally, I would like to clarify the relationship of workers compensation systems and OSHA's recordkeeping system. You state in your letter that the employee was told to file a workers compensation claim before the employer would report than an injury occurred at the workplace. Recording an injury or illness under the OSHA system, found at 29 CFR Part 1904, neither affects a person's entitlement to workers' compensation nor proves a violation of an OSHA rule. The rules for compensability under worker's compensation differ from state to and do not have any effect on whether or not a case needs to be recorded on the OSHA 300 Log. Many cases will be OSHA recordable and compensable but not OSHA recordable and some cases will be OSHA recordable but not compensable under workers' compensation. See 66 Federal Register 5933-34.

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 responses to new information. To keep apprised of such developments, you can consult OSHA's web site at <http://www.osha.gov>.

Sincerely,



Keith L. Goddard
Director

Directorate of Evaluation and Analysis