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### Standard Interpretations - Table of Contents

• **Standard Number:** [1904.31](#); [1904.31\(a\)](#); [1904.31\(b\)](#); [1904.4\(a\)](#); [1904.46](#); [1904.5\(b\)](#)

June 6, 2012

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Consolidated Contractors International Co.  
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Dear Mr. Kayyali:

Thank you for your January 19, 2012 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. Specifically, you ask OSHA to clarify the recordability criteria of several examples addressing the issues of determining work-relatedness and covered employees. I will state the general principles that apply and then address each of your specific examples.

We understand that your company, Consolidated Contractors Company (CCC), is based in Athens, Greece, but you rely on OSHA's Part 1904 regulation when recording occupational injuries and illnesses. Under OSHA's recordkeeping system, employers are only required to maintain OSHA injury and illness records if they are within the geographic coverage of the Occupational Safety and Health Act of 1970 (OSH Act). The OSH Act, and therefore the OSHA recordkeeping regulation, only applies to private sector employers within the jurisdictional boundaries of the United States and certain locations listed in Section 4(a) of the Act.

#### *Work-Relatedness and Injuries Resulting From Automobile Accidents*

Section 1904.4(a) of OSHA's recordkeeping regulation states "You 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 condition. Accordingly, for a case to be work-related there must be a *causal* connection between the injury or illness and an event or exposure at work. Causality for OSHA recordkeeping purposes is established if work is a cause. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause. See, the January 19, 2001 preamble to OSHA's final rule revising the recordkeeping regulation, 66 Federal Register 6943.

Section 1904.5(b)(1) provides that the "work environment" means the establishment and other locations where employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work. Please keep in mind that work-related injuries or illnesses may (1) occur at the employer's premises, or (2) occur off the employer's premises when the employee is engaged in a work activity or is present as a condition of employment. Therefore, when employees are working or conducting tasks in the interest of their employer, but are at a location away from the employer's establishment, the work-relatedness of an injury or illness that arises is subject to the same decision making process that would take place if the case had occurred at the establishment itself. In addition, the exceptions for determining work relationship in Section 1904.5(b)(2), and the requirements in Section 1904.5(b)(3), which requires an employer to evaluate an employee's work duties and environment to determine whether work caused or contributed to the resulting condition, apply equally whether the case occurs at or away from the establishment.

OSHA has made it clear that injuries and illnesses that occur during an employee's normal commute to and from work are not considered work-related, and therefore not recordable. See, 66 Federal Register 5960. For purposes of OSHA recordkeeping, the employee's commute from home to work ends once he or she arrives at the work environment or when he or she starts traveling "in the interest of the employer." See, 66 Federal Register 5951-52, and OSHA's January 15, 2004 Letter of Interpretation <http://www.osha.gov/recordkeeping/RKinterpretations.html>. On the other hand, if an employee is injured in a car accident while leaving the establishment to purchase supplies for the employer, the case would be work-related.

Additionally, Section 1904.46 provides that company parking lots and company access roads are included within the definition of "establishment." However, Section 1904.5(b)(2)(vii) provides that employers can exclude cases when an employee is injured in a motor vehicle accident occurring in a company parking lot or company access road while commuting to or from work. For example, if an employee is injured in a car accident in the company parking lot while arriving at work or while leaving the company's property at the end of the day, the case would not be work-related. Likewise, if an employee is commuting to work and is struck by a motor vehicle while walking across the company parking lot, the case would not be considered work-related. See OSHA's Recordkeeping FAQ 5-9.

In order for the exception in Section 1904.5(b)(2)(vii) to apply, the case must meet all three of the following

conditions. First, the injury must occur when the employee is commuting to or from work, and not when the employee is traveling in the interest of the employer. Second, the injury must take place in the company parking lot or company access road (the work establishment). Finally, the injury must result from a motor vehicle accident. OSHA's intention is to interpret the exemption in Section 1904.5(b)(2)(vii) narrowly to include only those "motor vehicle accidents" involving moving vehicles which are solely being used for commuting at the time of the accident; i.e., vehicles which have not been parked and which are not being used for work.

#### *Recording Injuries and Illnesses of Contract Employees*

OSHA's recordkeeping regulation at Section 1904.31(a) requires employers to record the recordable injuries and illnesses of employees they supervise on a day-to-day basis, even if these workers are not carried on the employer's payroll. Section 1904.31(b)(2) further clarifies that the host employer must record the injuries and illnesses of temporary workers it supervises on a day-to-day basis. Section 1904.31(b)(3) states that if the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. The requirements in Section 1904.31 are based on the consideration that the supervising employer is in the best position to obtain the necessary injury and illness information due to its control over the workplace and its familiarity with the work tasks and the work environment. Day-to-day supervision occurs when "in addition to specifying the output, product or result to be accomplished by the person's work, the employer supervises the details, means, methods and processes by which the work is to be accomplished."

Please remember that Section 1904.31(b)(4) provides that companies and their subcontractors must coordinate their efforts to ensure that each injury and illness is recorded only once — by the employer who provides day-to-day supervision. Of course, this coordination should focus on determining which entity provides day-to-day supervision. Also, please keep in mind that determinations regarding which entity must record the injuries and illnesses of temporary workers should be based on the actual facts concerning day-to-day supervision at the worksite. This means that the entity that actually provides day-to-day supervision is responsible for recording cases on the OSHA Log regardless of the wording of the parties' contractual arrangements.

#### **Category 1: Vehicle Incidents (9 scenarios)**

1. Is a case work-related if a third party vehicle (i.e. neither vehicle nor driver belongs to CCC) hits a CCC employee while he/she is working on CCC site/premises during working hours?

This is a work-related injury. The case does not meet the exception in Section 1904.5(b)(2)(vii) because the employee was working, and not commuting, at the time of the accident.

2. Is a case work-related if a third party vehicle hits a CCC employee while he/she is outside CCC site/premises during official working hours?

This is work-related if the CCC employee is working off-site as a condition of employment.

3. Is a case work-related if a third party vehicle hits a CCC employee while he/she is working in a public road/area during working hours?

This would be a work-related injury if the employee is working at the time of the accident. Normally, accidents on public property (streets/sidewalks) are not considered work-related, unless the employee is on the public street/sidewalk performing work and/or is present as a condition of their employment.

4. Is a case work-related if a CCC vehicle (driven by a CCC employee) hits another CCC employee outside CCC site/premises during working hours?

Again, the case is work-related if the injured CCC employee was working off-site as a condition of employment. For this analysis, it makes no difference who owns or drives the vehicle. From this scenario, we assume that the injured employee was working and not commuting at the time of the injury.

5. Is a case work-related if a CCC vehicle (driven by a CCC employee) is involved in a vehicle accident while commuting to or from CCC site/premises?

This is not a work-related injury because the employee was commuting. See, Section 1904.5(b)(2)(vii).

6. Is a case work-related if a vehicle accident, caused by and involving only a subcontractor employee, takes place on CCC site/premises during working hours?

This case is work-related if it does not meet the exception in Section 1904.5(b)(2)(viii) discussed above. The employer that provides day-to-day supervision of the subcontractor employee would be responsible for recording the case.

7. Is a case work-related if a vehicle accident, caused by and involving only a subcontractor employee, takes place outside CCC site/premises during working hours?

The case is work-related if the subcontractor was working off-site as a condition of employment at the time of the injury. The employer that provides day-to-day supervision of the subcontractor is responsible for recording the injury.

8. Is a case work-related if a vehicle accident, caused by and involving only a consortium (or joint venture) employee, takes place inside CCC site/premises during working hours?

This is a work-related incident if it does not meet the exception in Section 1904.5(b)(2)(viii) as discussed above. The employer that provides day-to-day supervision of the consortium employee is responsible for recording the injury.

9. Is a case work-related if a vehicle accident, caused by and involving only a consortium (or joint venture) employee, takes place outside CCC site/premises during working hours?

This case is work-related if the consortium employee is working off-site as a condition of employment. For this scenario, we assume the employee is working and not commuting. The employer that provides day-to-day supervision of the consortium employee is responsible for recording the injury.

#### Category 2: Other types of incidents (2 scenarios)

1. Is an injury or illness work-related if it is caused by and only involves a subcontractor employee, a consortium (or joint venture) employee, or a subcontractor of consortium employee, when it takes place on CCC site/premises during working hours?

Cases involving subcontractor or consortium employees are work-related if events or exposures in the work environment either caused or contributed to the resulting condition, unless it meets one of the exceptions in Section 1904.5(b)(2). The employer who provides day-to-day supervision over this type of worker at the time of the injury or illness would be responsible for recording the case.

2. Is an injury or illness work-related if it is caused by and only involves a subcontractor employee, a consortium (or joint venture) employee, or a subcontractor of consortium employee, if it takes place off CCC site/premises during working hours?

As discussed above in part 1, this case would be work-related if the employee is working off-site as a condition of employment. Again, the employer who was providing day-to-day supervision of the employee at the time of the injury or illness is responsible for recording the case.

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 website at <http://www.osha.gov>.

Sincerely,

Amanda Edens, Acting Director  
Directorate of Evaluation and Analysis

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