Standard Interpretations

07/14/2008 - Whether to record two cases of employee injuries sustained in company parking lot during employees commute to work.

Standard Interpretations - Table of Contents

- **Standard Number:** 1904; 1904.5(a); 1904.5(b)(1); 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.

July 14, 2008

Ms. Lori A. Vaught, Manager
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ESH&QA & Performance Assurance
Savannah River Site
Aiken, SC 29808

Dear Ms. Vaught:

Thank you for your letter dated February 15, 2008, to the Occupational Safety and Health Administration (OSHA) regarding the Injury and Illness Recording and Reporting Requirements contained in 29 CFR Part 1904. Specifically, you requested guidance from OSHA on whether to record two cases regarding commuting to work.

Scenario: In your letter, you describe two instances where employees commute from home to work and park their personally-owned vehicles in the company controlled parking lot. The first employee opened the driver side door and started to exit his car when he caught his right foot on the raised door threshold. The employee subsequently fell onto the parking lot surface and sustained a right knee cap injury. The second employee was in the process of exiting his pick-up truck when he slipped on a rail used to enter and exit the vehicle. The employee fell onto the parking lot surface and sustained a twisted right knee.

Response: Section 1904.5(a) provides that an injury or illness must be considered work-related if an event or exposure in the work environment either caused or contributed to the injury or illness or significantly aggravated a pre-existing injury or illness. Section 1904.5(b)(1) defines the work environment as the establishment and other locations where one or more employees are working or are present as a condition of their employment. Work relatedness is presumed under Part 1904 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.

Under OSHA's recordkeeping regulation, company parking lots and company access roads are included within the definition of "establishment." (See the preamble to the January 19, 2001

final rule revising OSHA's recordkeeping regulation, 66 *Federal Register* 6076, and OSHA's Frequently Asked Questions (FAQ) 5-10 at http://www.osha.gov/). 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 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.

Additionally, 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. On the other hand, if an employee was injured in a car accident while leaving the property to purchase supplies for the employer, the case would be work-related. For purposes of Part 1904, 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 – *Evaluation of seven scenarios for work-relatedness and recordkeeping requirements* – http://www.osha.gov.

In the scenario described in your letter, while both employees' sustained injuries in the company parking lot, neither case involved a motor vehicle accident. Instead, the two employees were injured when they fell out of their parked vehicle and struck the parking lot surface (work environment). As a result, neither case meets the exception in Section 1904.5 (b)(2)(vii), and, therefore, must be recorded on the establishment's log, if they meet the other recording criteria listed in the regulation (e.g., medical treatment, days away from work, etc.).

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. 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,

Keith Goddard, Director
Directorate of Evaluation and Analysis

Standard Interpretations - Table of Contents

Back to Top www.osha.gov www.dol.gov

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