

August 10, 2011

Mr. Brent Clark
Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603

Dear Mr. Clark:

Thank you for your January 26, 2011, letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping regulation contained in 29 CFR 1904 – Recording and Reporting Occupational Injuries and Illnesses. Your letter was forwarded to my office by Thomas Galassi, Director, Directorate of Enforcement Programs. The Office of Statistical Analysis, within my Directorate, is responsible for the administration of the OSHA injury and illness recordkeeping system nationwide. In an effort to provide the public 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 website

Scenario: Two entities have entered into a contractual agreement to provide records management and maintenance services for a Department of Homeland Security (DHS) records storage facility. Employer A is the prime contractor for the project, and Subcontractor B is a subcontractor of Employer A. Both Employer A and Subcontractor B employ management and non-management employees at the facility.

Under the contract, Subcontractor B is obligated to provide the staffing and resources needed to perform its assigned tasks. Subcontractor B has several supervisors at the facility who oversee the day-to-day operations of employees within their respective departments.

Employer A has a Project Manager, who oversees overall operations at the facility, as well as several high-level managers, including a Human Resource Manager, Facilities Manager, and Quality Control Manager. Employer A provides general guidance to Subcontractor B managers. For example, Employer A managers identify quality standards, and timeframes within which Subcontractor B must direct and manage its resources to complete specific tasks.

Question: With respect to OSHA's regulation at 29 CFR 1904.31(a), how should Employer A and Subcontractor B maintain injury and illness records for employees who are supervised on a "day-to-day basis?"

Response: Section 1904.31 requires employers to record the recordable injuries and illnesses of all their employees, whether classified as labor, executive, hourly, salaried, part-time, seasonal, or migrant workers. Employers are also required to record the recordable injuries and illnesses of all employees they supervise on a day-to-day basis, even if these workers are not carried on the employer's payroll. Day-to-day supervision generally exists when the employer "supervises not only the output, product, or result to be accomplished by the person's work, but also the details, means, methods and processes by which the work objective is accomplished." See, *OSHA's January 15, 2004 letter of interpretation to Leann M. Johnson-Koch* (enclosed).

The requirements in Section 1904.31 assign the responsibility for recording and reporting to the employer with the greatest amount of control over the working conditions that led to the injury or illness. OSHA stated in the 2001 preamble to the final rule revising the Part 1904 regulation that the supervising employer is in the best position to obtain the necessary injury and illness information due to its control over the worksite and its familiarity with the work tasks and the work environment. The employer with day-to-day supervision is also in the best position to use the injury and illness data to learn about and correct hazards in the workplace. See, 66 Federal Register 6038.

Additionally, please know that Section 1904.30(a) requires employers to maintain a separate OSHA 300 Log for each establishment expected to be in operation for one year or longer. Based on the facts described above, and because they supervise employees on a day-to-day basis, Employer A and Subcontractor B are separate employers, and therefore must maintain a separate OSHA 300 Log at this facility.

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,

Dorothy Dougherty, Acting Director
Directorate of Evaluation and Analysis