

COVID-19 AND CAL/OSHA REPORTING REQUIREMENTS

In the state of California, all public and private employers are required to follow Cal/OSHA's Title 8 Standards of the California Code of Regulations (CCR).^{*} The OSHA **reporting** and **recording** requirements can be a confusing topic for California employers and the current pandemic leaves many scratching their heads.

There are two key items for employers to keep in mind:

1. EVERY employer's operations and exposures are different, and it is the employer's ultimate responsibility determining how the [Title 8 Regulations](#) apply to their organization.
2. OSHA **reporting** and **recording** are two distinctly different employer responsibilities, and each should be evaluated independently. Refer directly to the applicable Title 8 regulations when determining how best to meet your organization's obligations.

Poms & Associates offers this informational document to those employers who seek guidance on how best to handle their organization's recording requirements specifically pertaining to COVID-19.

Reporting

At this time, the presence of a pandemic (COVID-19) has not caused Cal/OSHA to alter the reporting requirements. [CCR Title 8, Section 342](#) (a) reads, "Every employer shall report immediately to the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment." The regulation later defines immediately as, "Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness."

The employer must also determine whether an illness or injury meets the Cal/OSHA definition of "serious," which is defined under [Section 330](#) (h) as, "Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment that requires inpatient hospitalization for other than medical observation or diagnostic testing, or in which an employee suffers an amputation, the loss of an eye, or any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by an accident on a public street or highway, unless the accident occurred in a construction zone."

A common area of confusion for employers can be clarified with the dissection of "**ANY** serious injury or illness, or death... occurring **IN** a place of employment **OR IN CONNECTION** with **ANY** employment."

When it comes to reporting, employers must avoid their instinctual analysis of a serious injury or illness being "work-related." Employers are routinely cited for failing to report serious injuries and illnesses that they believed were not work-related.

Here are some examples to assist in determining an employer's reporting obligation:

1. While at his desk, an employee suffers a massive stroke and is transported to the hospital where he is admitted for an extended period. Workers' Compensation denies the claim as being work-related. Is this a reportable incident?

*(Yes! The event meets the definition of **any serious injury/illness which occurred in a place of employment.**)*

***Federal employers (military, USPS, etc.) must follow Federal OSHA Regulations (CFR)**

1. A food delivery person feels ill and calls in sick. She later notifies her employer that she has tested positive for COVID-19. She does not know how she contracted it and she has been advised to isolate herself at home where she makes a full recovery. Is this reportable?

(No! Regardless of whether the illness is determined to have been work-related, the illness did not result in hospitalization and thus, does not meet the definition of "serious" illness. Therefore, the incident is not reportable.)

2. During his shift, a warehouse employee tells his boss that he feels ill. Due to the employee's symptoms including fever and shortness of breath, the employer calls 911 and the employee is transported to the hospital. The employer is unable to determine the exact illness but learns that the employee will be hospitalized. Is this incident reportable?

(Yes! Due to inpatient hospitalization, the illness is serious and occurred in connection with employment. Even if the illness is not work-related, the employer should report the incident.)

3. An assembly line employee suffers an amputation of two fingers while operating a punch press. She is transported to the hospital where both fingers are successfully reattached. She spends a total of 6 hours at the ER before she is discharged. Is this reportable?

(Yes! Regardless of hospitalization, an amputation injury meets the definition of a serious injury and should be reported by the employer)

4. An emergency room nurse, who has been working directly with patients suspected of having COVID-19, begins to feel ill while on shift. She is admitted to the hospital for testing. After spending 12 hours at the hospital for observation and testing, she is found to be negative for COVID-19 and discharged to go home. Is this reportable?

(No! Although the employee was admitted to the hospital, she was admitted for observation and testing only. Her employer does not need to report this illness to Cal/OSHA.)

5. Due to an ongoing pandemic, an employee is working from home. After responding to emails, he gets up from his desk and proceeds to trip over the cords of his workstation. He falls and suffers a compound fracture to his right arm. His wife drives him to the hospital where is admitted for emergency surgery. The employee's wife calls her husband's employer to advise them of the accident. Should the Employer report the injury?

(Yes! Since the employee was admitted to the hospital and the injury occurred in connection with work, the employer should report the serious injury.)

Serious injury/illness reporting should be made directly to the local [Cal/OSHA office](#) where the injury/illness occurred. Each injury/illness should be evaluated to determine whether it meets the reporting criteria. Employers should remember that their requirement to report a serious injury or illness must be done without regard to date or time. Cal/OSHA has a live person available 24/7 to take down the [required information](#). Do not wait, as citations for late reporting may be issued for not adhering to the timeframes required for reporting a serious injury or illness.

Employers should always refer directly to the Title 8 regulations, and Poms & Associates is available to assist with any questions you might have.

This briefing has been prepared by Poms & Associates Insurance Brokers, LLC to provide information on recent developments of interest to our clients. It is not intended to offer legal or regulatory advice for a particular situation. Events are rapidly developing during this national state of emergency, and best practices are constantly changing. We recommend that individuals and entities carefully monitor and follow health directives of the WHO and CDC, along with federal, state and local authorities.