The U.S. Occupational Safety & Health Administration (OSHA) May 19 issued temporary guidelines for enforcement of its recordkeeping requirements for reporting a COVID-19 illness. These guidelines are in line with a March 25 request ARTBA sent to OSHA Principal Deputy Assistant Secretary Loren Sweatt.

Because of the difficulty with determining “work-relatedness” of exposure, OSHA compliance officers (CSHOs) have been directed to exercise discretion when assessing an employer’s efforts in determining if a COVID-19 illness is work-related. The CSHO’s discretion hinges on evidence of whether the employer has made a “reasonable determination of work-relatedness” following these considerations:

1. **The reasonableness of the employer’s investigation into work-relatedness.** Employers are not expected to undertake extensive medical inquiries, given employee privacy concerns and most employers’ lack of expertise in this area. For the transportation construction industry, if an employee is infected, it is sufficient to:
   a. ask an employee how he believes the COVID-19 illness was contracted;
   b. while respecting employee privacy, discuss with the employee his work and out-of-work activities that may have led to the COVID-19 illness; and
   c. review the employee's work environment for potential exposure.

2. **The evidence available to the employer.** The evidence a COVID-19 illness was work-related should be considered based on the information reasonably available to the employer at
the time it made its work-relatedness determination. If the employer later learns more information related to an employee's COVID-19 illness, then it should be taken into account.

3. The evidence COVID-19 illness was contracted at work. CSHOs should consider all reasonably available evidence to determine whether an employer has complied with its recording obligation. Considerations might include:

a. Are there several cases among workers who work closely together and there is no alternative explanation?

b. Was the illness contracted shortly after lengthy, close exposure to a particular customer or coworker who has a confirmed case of COVID-19 and there is no alternative explanation?

c. Did the worker’s job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation?

d. An illness is likely not work-related if s/he is the only worker to contract COVID-19 in her vicinity and her job duties do not include having frequent contact with the general public, regardless of the rate of community spread.

e. An illness is likely not work-related if s/he, outside the workplace, closely and frequently associates with someone who (1) has COVID-19; (2) is not a coworker, and (3) exposes the employee during the period in which the individual is likely infectious.

If, after the reasonable and good faith inquiry the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness. Nevertheless, the employer should review all COVID-19 cases among workers and respond appropriately to, regardless of whether a case is ultimately determined to be work-related.

For more details, see: Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19).

You can also contact me with questions at 202.683.1008 or bsant@artba.org.