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OSHA Increases Coronavirus-Related Citations

November 16, 2020

According to a recent news release published November 13, 2020 by the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA"), OSHA has issued a total of 204 citations for violations relating to coronavirus over the last nine months. The financial consequences of these violations may be significant for inspected businesses, as coronavirus citations have resulted in proposed penalties totaling \$2,856,533, with individual employer citations assessed up to \$32,965. OSHA's main focus related to coronavirus violations includes the following failures to:

- Implement a written respiratory protection program;
- Provide a medical evaluation; a respirator fit test; or training on the proper use of a respirator and personal protective equipment ("PPE");
- Report an injury, illness or fatality;
- Record an injury or illness on OSHA recordkeeping forms; and
- Comply with the General Duty Clause of the Occupational Safety and Health Act of 1970 ("OSH Act").

Workplace Inspections

Defending a workplace inspection and proposed violation related to coronavirus involves a multi-step strategy, which starts before OSHA walks in the door. Even where violations may exist, OSHA has certain enforcement discretion where employers demonstrate and document good-faith efforts to comply with OSHA standards. Therefore, the planning and preparation an employer takes now can be critical to defending against perceived regulatory non-compliance under the OSH Act, such as any failure to furnish PPE or provide a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees, as set forth in the General Duty Clause.

Reporting and Recording Obligations

Understanding the current enforcement guidance for an employer's reporting and recording obligations is also important. Various aspects should be considered when an employee tests positive for coronavirus, all of which will factor into an employer's determination of whether the virus was transmitted at work, i.e. a work-related exposure. These factors include reviewing the work environment for exposure scenarios, such as the employee's frequent, close contact with customers or co-workers who are also positive for coronavirus.

Moreover, having an employee who tests positive for coronavirus does not automatically trigger an employer's reporting or recording obligations. In addition to the work-related determination, employers must also consider whether other qualifying events are present, including whether general recording criteria have been met, whether an exception to recording applies, or whether an in-patient hospitalization or fatality due to coronavirus occurred in the appropriate timeframe for reporting purposes.

Additional Information

If you would like to discuss a potential occupational exposure due to coronavirus or need any further guidance on workplace accidents, injuries or illnesses, please contact your Kutak Rock attorney or any of the attorneys in the [OSHA Compliance & Defense Practice](#) or [Employment Law Group](#), and we would be happy to discuss this with you. You may also visit us at www.KutakRock.com.

