- **Standard Number:** 1904 ; 1904.5 ; 1904.5(a) ; 1904.5(b)(2) ; 1904.7 ; 1904.6 ; 1904.6(a) ; 1904.31



January 15, 2004

Ms. Leann M. Johnson-Koch
1200 Nineteenth Street, N.W.
Washington, D.C. 20036-2412

Dear Ms. Johnson-Koch:

Thank you for your E-mail to the Occupational Safety and Health Administration (OSHA) regarding the Injury and Illness Recording and Reporting Requirements contained in 29 CFR Part 1904. Your letter was forwarded to my office by Richard Fairfax, Director, Directorate of Enforcement Programs. The Division of Recordkeeping Requirements is responsible for the administration of the OSHA injury and illness recordkeeping system nationwide. Please excuse the delay in responding to your request.

In your letter, you ask OSHA to clarify the following scenarios to ensure accurate and consistent guidance to your members for purposes of OSHA Recordkeeping requirements. I will address your scenarios by first restating each one and then answering it.

**Scenario 1:**

- An employee reported to work at 7:00 a.m.
- At 12:15 p.m. the employee reported that his toes on his left foot had started swelling and his foot had started hurting.
- The employee wanted to go to a doctor for evaluation.
- On the First Report of Injury, that the employee completed before he went to the doctor, the employee indicated that the cause of the illness was "unknown (feet wet at cooling tower)."
- When answering the doctor's question: "How did injury occur?" the employee answered that the only thing he could think of was that his feet were wet all the previous day due to work in the morning at a cooling tower. The cooling tower water is treated to remove bacteria and then used in process operations in the plant.
- The doctor described the illness/injury as foot edema/cellulitis.
- The doctor also prescribed the injury as an occupational disease, prescribed an antibiotic, and the employee missed one day of work.
- The company sent the employee to a second doctor who said to continue using the antibiotic.

- Neither doctor could state conclusively that the foot edema/cellulitis was or was not due to the employee's feet being wet due to work at the cooling tower.
- Neither doctor is a specialist in skin disorders.
- During an incident review at the site, the employee again said he did not know if his feet being wet all day the previous day caused the injury/illness.
- The employee also stated that he had not worn the personal protective equipment, rubber boots, prescribed for this task.

The company determined that this injury/illness is not work-related (did not occur in the course of or as a result of employment), since neither physician nor the employee can state with certainty that the injury/illness was caused by the employee's feet being wet all day due to work at the cooling tower. Since the injury/illness was determined to not be work-related, then the company deemed the incident non-recordable.

**Response:** A case is work-related if it is *more likely than not* that an event or exposure in the work environment was a cause of the injury or illness. The work event or exposure need only be one of the causes; it not need to be the sole or predominant cause. In this case, the fact that neither the physician nor the employee could state with certainty that the employee's edema was caused by working with wet feet is not dispositive. The physician's description of the edema as an "occupational disease," and the employee's statement that working with wet feet was "the only thing he could of" as the cause, indicate that it is more likely than not that working with wet feet was a cause. The case should be recorded on the OSHA 300 Log.

**Scenario 2:**

An employee must report to work by 8:00 a.m.

- The employee drove into the company parking lot at 7:30 a.m. and parked the car.
- The employee exited the car and proceeded to the office to report to work.
- The parking lot and sidewalks are privately owned by the facility and both are within the property line, but not the controlled access points (i.e., fence, guards).
- The employee stepped onto the sidewalk and slipped on the snow and ice.
- The employee suffered a back injury and missed multiple days of work.

The company believes that the employee was still in the process of the commute to work since the employee had not yet checked in at the office. Since a work task was not being performed, the site personnel deemed the incident not work-related and therefore not recordable.

**Response:** Company parking lots and sidewalks are part of the employer's establishment for recordkeeping purposes. Here, the employee slipped on an icy sidewalk while walking to the office to report for work. In addition, the event or exposure that occurred does not meet any of the work-related exceptions contained in 1904.5(b)(2). The employee was on the sidewalk because of work; therefore, the case is work-related regardless of the fact that he had not actually checked in.

**Scenario 3:**

The employee described in Scenario 2 missed 31 days of work due to the back injury.

- On day 31, the doctor provided a release for returning to work.
- The next morning (day 32), when the employee was due to report to work, the employee stated that his back was hurting, and the employee did not report to work.
- The employee scheduled a doctor's appointment, with the same doctor, and visited the doctor on day 33.
- The doctor issued a statement stating that the employee was not able to return to work.

Since the employee was released to return to work, the company does not believe it has to count the intervening two days on the OSHA log.

**Response:** The employer would have to enter the additional days away from work on the OSHA 300 log based on receiving information from the physician or other licensed health care professional that the employee was unable to work.

**Scenario 4:**

- An employee reports to work.
- Several hours later, the employee goes outside for a "smoke break."
- The employee slips on the ice and injures his back.

Since the employee was not performing a task related to the employee's work, the company has deemed this incident non-work related and therefore not recordable.

**Response:** Under Section 1904.5(b)(2)(v), an injury or illness is not work-related if it is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours. In order for this exception to apply, the case must meet both of the stated conditions. The exception does not apply here because the injury or illness occurred within normal working hours. Therefore, your case in question is work-related, and if it meets the general recording criteria under Section 1904.7 the case must be recorded.

**Scenario 5:**

- An employee drives into the company parking lot at 7:30 a.m., exits his car, and proceeds to cross the parking lot to clock-in to work.
- A second employee, also on the way to work, approaches the first employee, and the two individuals get into a physical altercation in the parking lot. The first employee breaks an arm during the altercation.
- The employee goes to the doctor and receives medical treatment for his injury.

The company deems this non-work related, and therefore non-recordable, since the employees had not yet reported to work and a work task was not being performed at the time of the altercation.

**Response:** The recordkeeping regulation contains no general exception for purposes of determining work-relationship for cases involving acts of violence in the work environment. Company parking lots/access roads are part of the employer's premises and therefore part of the employer's establishment. Whether the employee had not clocked in to work does not affect the outcome for determining work-relatedness. The case is recordable on the OSHA log, because the injury meets the general recording criteria contained in Section 1904.7.

**Scenario 6:**

- An employee injured a knee performing work-related activities in 2001.
- The accident was OSHA recordable and subject to worker's compensation.
- The employee had arthroscopic knee surgery eleven months later and was released to full duty a month and a half after the arthroscopic surgery.
- The employee had a second knee injury three months after the return to work release (after the first surgery).
- Post-surgery (second surgery), the doctor prescribed Vioxx® as an anti-inflammatory.
- Approximately one and one-half months after the second knee surgery, the employee was given another full release to return to work full duty and returned to work.
- However, the doctor told the employee to continue to take Vioxx® as prescribed (as needed) and to return to the doctor as needed.
- The employee scheduled a follow-up appointment with the doctor.
- The day before the appointment, the employee bumped his knee at work.
- During his scheduled doctor's appointment (was to be the last follow-up visit) the employee mentioned the latest incident (bumping the knee) to the doctor and showed him where the pain was occurring due to bumping his knee.
- The doctor stated that the employee had an inflamed tendon (Grade 1 lateral collateral ligament sprain) that was not part of the initial surgery (patellar tendonitis).
- The doctor stated in the diagnosis that the original injury that required knee surgery was resolved.
- The doctor told the employee to continue taking Vioxx® for the inflamed tendon.

Since the employee was already taking the medication prescribed (Vioxx®), the site does not believe this is recordable as a second incident.

**Response:** In the recordkeeping regulation, the employer is required to follow any determination a physician or other licensed health care professional has made about the status of a new case. The inflamed tendon is a new case because the employee had completely recovered from the previous injury and illness and a new event or exposure had occurred in the work environment. Therefore, for purposes of OSHA recordkeeping, the employer would enter the case on the OSHA 300 log as appropriate.

**Scenario 7:**

- A site hired numerous temporary workers at its plant.
- Three temporary workers were injured.
- They each received injuries that were recordable on the OSHA 300 Log.
- The employees were under the direct supervision of the site.

Is it correct that these injuries were recordable on the site log or should they have been recordable on the temp agency log? What are the criteria related to temporary workers that need to be reviewed to determine which OSHA log is appropriate for recording the injury/illness?

**Response:** Section 1904.31 states that the employer must record the injuries and illnesses that occur to employees not on its payroll if it supervises them on a day-to-day basis. 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."

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 appraised of such developments, you can consult OSHA's website at http://www.osha.gov. If you have any further questions, please contact the Division of Recordkeeping Requirements, at 202-693-1702.

Sincerely,

Frank Frodyma
Acting Director
Directorate of Evaluation and Analysis