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New OSHA Interpretation Letter Clarifies “Double Reporting” Issue

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In a new formal [Letter of Interpretation \(“LOI”\)](#) responding to [Conn Maciel Carey LLP \(“CMC”\)](#), the Occupational Safety and Health Administration (“OSHA”) explains that employers are only obligated to report a serious injury or illness once, even if it ultimately results in more than one reportable outcome; e.g., an employer need not report to OSHA a later-developing employee death, if the employer has already reported to OSHA the hospitalization of that same employee from the same incident that resulted in his hospitalization. A plain reading of OSHA’s [hospitalization, amputation, and fatality regulatory language](#) did not make this clear, nor did existing guidance provided by OSHA at the time.

CMC has represented numerous employers in contested cases and inspection disputes related to alleged failures to make that second report to OSHA when the same serious injury resulted in more than one reportable outcome under 29 C.F.R. 1904.39. Thus, members of [CMC’s national OSHA Practice](#) submitted a request for an interpretation letter from Fed OSHA on April 14, 2020, seeking to address the confusion among the regulated community and OSHA’s field staff in area offices around the country about whether a second report was required. As we expected, the answer is that double reporting is not required.



OSHA’s [serious injury and illness reporting rule](#) requires an employer to notify OSHA about a work-related in-

patient hospital admission (for more than observation and monitoring), amputation, or loss of an eye that occurs within 24 hours of the underlying incident. The report must be made to OSHA within 24 hours of the employer learning of one of these outcomes and that it is work-related. Separately, employers must report a work-related fatality within 8 hours of learning of the fatality.

CMC's request for this LOI focused on what an employer should do where an injury or illness results in two outcomes in sequence that each technically meet the reporting criteria laid out in 29 C.F.R. 1904.39. The LOI provides two examples to illustrate when this circumstance could arise:

1. an in-patient hospitalization reported to OSHA that later results in a fatality; and
2. an in-patient hospitalization reported to OSHA that later results in an amputation.

OSHA acknowledges in the LOI that an employer's entire reporting obligation has been met as long as it initially reports the injury or illness within 24 hours of learning of the first reportable outcome (i.e., a work-related in-patient hospitalization). A second report – of the fatality in Scenario 1 of the LOI and the amputation in Scenario 2 – is NOT required. In other words, if a hospitalization is reported to OSHA, a subsequent death or amputation is not reportable. Similarly, if an amputation is timely reported to OSHA, a subsequent in-patient hospitalization or death would not be reportable.

OSHA further explained that it was not its intent to require that related events be reported twice and pointed to this language from the Preamble to the Final Recordkeeping and Reporting Rule: "amputations involving in-patient hospitalization" only necessitate a "single report." OSHA concludes the LOI by reminding employers that they must still ensure the most serious outcome of the injury is properly recorded on the 300 Log.

The approach highlighted by OSHA in the LOI makes sense as the initial report provides OSHA all the notice it needs to begin its own investigation (either through an on-site inspection or the Rapid Response Investigation protocol). This guidance should ensure consistent interpretation of the standard from an enforcement perspective – at least at the Federal OSHA level – and provide the employer community certainty in an area of conflicting interpretations surrounding OSHA's serious injury and illness reporting regulation. State plan states that have promulgated their own serious injury and illness *reporting* standards could take a different approach, but to the extent the standards rely on similar language, they should follow this same approach.

Here is [a link to the new interpretation letter posted on OSHA's website](#). We really do think this will be a helpful interpretation for the regulated community. It definitely limits the number (and severity) of reports employers must make to OSHA, which could impact the likelihood that OSHA will initiate an in-person inspection. This should be a factor in your organization's compliance and strategic thinking about the timing of reporting hospitalizations.