

PUBLICATION

OSHA Expected to Issue More COVID-19 Citations in Light of Recent Lawsuit

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The Occupational Safety and Health Administration (OSHA) has increased pressure on health care facilities, and long term care providers specifically, by issuing COVID-19-related citations and initiating COVID-19-related investigations.

The first [citation](#) was issued on May 18, 2020, to Winder Nursing Inc., a nursing home in Winder, Georgia. The facility was fined \$6,506 for failing to report a work-related injury that resulted in an in-patient hospitalization. According to the citation, Winder had six employees hospitalized, the first hospitalization occurring as early as April 19, 2020, but the facility failed to inform OSHA until more than two weeks later, on May 5, 2020. OSHA assessed the facility a \$6,506 fine for the failure to notify violations. Though the citation itself did not reference COVID-19, an OSHA spokesperson has since confirmed that all six of the workers had been hospitalized due to COVID-19. Interestingly, the citation was classified as "Other-than-Serious" by OSHA, indicating that the illnesses were not life threatening; nonetheless, the facility was cited for failing to notify OSHA of the employee's hospitalizations within the required 24-hour window.

Perhaps in response to the Winder issues, on May 19, 2020, OSHA released a [memorandum](#) clarifying its recordkeeping and reporting requirements for cases of COVID-19. Under OSHA's recordkeeping requirement, COVID-19 is a recordable illness, and employers are responsible for recording cases, if:

1. The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention;
2. The case is work-related (for example, a number of cases developing among workers who work closely together without an alternative explanation); and
3. The case results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

If a COVID-19 case results in an inpatient hospitalization, the case must be reported to OSHA within 24 hours of the time the employer learns of the hospitalization or 24 hours of the time it learns that the case of COVID-19 has been confirmed. A work-related COVID-19 fatality must be reported to OSHA within 8 hours, which will automatically trigger an OSHA inspection.

The second major [citation](#) was issued earlier this month to OIINH EMP, LLC/Salem West Healthcare Center, which operates three nursing homes in Ohio. After it was notified that seven Salem West employees were hospitalized for issues related to COVID-19, OSHA performed an inspection of the facilities and found violations of OSHA's respiratory protection standards. The facilities were cited for failing to provide a medical evaluation to determine the employees' ability to use a respirator, and failing to establish and implement a written respiratory protection program.

OSHA has categorized the violations issued to Salem West as "Serious," and the agency has proposed \$40,482 in penalties.

Even more recently, OSHA initiated an [investigation](#) of Hackett Hill Center, a nursing facility in Manchester, New Hampshire, after the facility reported an employee fatality that it believed was COVID-19-related. As of June 18, 2020, Hackett Hill identified at least 16 cases of COVID-19 among staff members. OSHA opened its investigation on May 25, 2020, and the case status of the investigation is currently listed as open on the OSHA website. OSHA has up to six months to complete its investigation and determine what, if any, actions it may take against the facility.

Timely reporting of COVID-19-related deaths or hospitalizations can ensure that OSHA is able to conduct inspections and implement protections to slow the spread of COVID-19 in the workplace. In an interesting twist to the concerns of OSHA's involvement in issues related to worker protections during the pandemic, there has been a growing threat by employees and plaintiff's attorneys to pursue claims directly against OSHA. Those threats materialized just last week, when on July 22, 2020, three employees of a meatpacking plant in Pennsylvania filed a lawsuit in federal court against OSHA and the U.S. Secretary of Labor alleging that the agency failed to respond to their complaints regarding the "imminent danger" that they faced working at the plant due to the COVID-19 pandemic.

The employees allege that they filed complaints with OSHA about health and safety concerns at the plant as early as May 19, 2020. The employees' complaints detailed the plant's failures to (1) provide workers with adequate PPE, (2) ensure that employees are maintaining a distance of six-feet apart while working, and (3) permit employees to adequately sanitize their hands during the workday. The employees allege that as a result of these failures, as many as half of the plant's employees had contracted COVID-19. Further, according to the employees, OSHA declined to conduct an inspection or take action to remedy the conditions.

The employees are seeking a court order requiring OSHA to:

- disclose all communications between OSHA and the plant regarding the worksite conditions;
- conduct an immediate inspection of the plant;
- provide employees with sufficient PPE;
- implement social distancing and sanitation measures;
- discontinue incentives for sick employees to report to work; and
- inform employees of COVID-19 positive cases at the facility.

OSHA is likely to significantly increase inspections and enforcement actions as the pandemic continues. Employers should therefore ensure compliance with OSHA guidelines, particularly as it relates to providing and regulating PPE usage and reporting COVID-19-related illnesses among employees.

If you have any questions about this alert or how these new developments may impact your facility, please contact a member of Baker Donelson's [Labor & Employment](#), [Long Term Care](#), or [OSHA](#) practice groups.