

OSHA Recordability vs. OWCP Compensability

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Regulations

OSHA

Occupational Safety & Health Act
(OSH Act) 1970

- 29 CFR 1960
- 29 CFR 1904 (*Jan 2005*)

OWCP

Federal Employees'
Compensation Act (FECA) 1974

- 5 USC 8101-8193
- 20 CFR Chapter 10
- 18 USC 1920 Penalties
 - Employee Falsification
 - Supervisor Falsification
 - Management Refusal

Intent

OSHA

Ensure a safe and healthful
working environment for all VHA
employees

- Identify causal and contributing factors
- Abate hazards that are causing injuries
- Maintain compliance with OSHA recordkeeping rules

OWCP

Ensure medical and
compensation benefits for job-
related injuries

- Employee right to file a workers' comp claim
- Employee responsibility to prove that claim
- Determine benefit entitlement

Requirements

OSHA

Management is required to perform the following:

1. Investigate every injury or illness reported.
2. Document investigation
3. Ensure that corrective actions are implemented to prevent future injuries or illness

OWCP

Employees may elect to file a workers' compensation claim and has the burden to prove:

1. Timely Filed
2. Civilian Employee
3. Fact of Injury
4. Performance of Duty
5. Causal Relationship

Responsibilities

OSHA

OSHA Recordkeeping is a Federal Agency responsibility

- Supervisors and Safety Officers determine OSHA recordability based on objective information received during investigation
- Updates to recordability status must be made regularly to ensure compliance with regulations.

OWCP

Claims Adjudication is an OWCP responsibility

- DOL/OWCP has sole adjudication authority
- Agency provides input through controversy and challenge process
- Employee may appeal decision
- Agency has no appeal rights under FECA

OSHA Recordkeeping Program Changes

OSHA Pre-January 2005

29 CFR 1960
Every accepted WC case is also an OSHA recordable case.

- Misaligned with Private Industry Recordkeeping
- Assumed that employees would always file a workers' compensation claim

OSHA Post-January 2005

Directs Federal Agencies to keep records in accordance with 29 CFR 1904

- Aligns with Private Industry Recordkeeping Requirements
- Evaluates each injury/illness based on independent criteria from workers' compensation compensability.

Impact of Program Changes

OSHA Recordkeeping is now based on three key questions- Asked in this order:

1. Is the incident work-related?
2. Is the incident a new case?
3. Does the case meet one or more of the general recording criteria?

Separates OSHA recordability from OWCP compensability:

- Injuries and Illnesses can be compensable under OWCP but not recordable under OSHA
- Medical evidence to support disability under OWCP is more stringent than what is required under OSHA

Implications of Program Changes

- Total Case Rates (TCR) and Lost Time Case Rates (LTCR) data shared between OWCP and OSHA are **based on FY OWCP Data**
- OSHA reporting on the Federal Injury/Illness Statistics website relies on OWCP data
- OSHA Federal Targeting Initiatives use TCR and LTCR to determine which Federal agencies to inspect
- OSHA Compliance Officers evaluate Federal agencies based on 29 CFR 1904 regulations
- In August 2013 OSHA updated 29 CFR 1960, requiring agencies to submit their OSHA 300 series data to DOL annually. Agencies are currently submitting their 2016 CY data.

1. OSHA Work-Related vs. OWCP Compensable

An injury or illness occurring in the work environment that falls under one of the following exceptions *is not work-related* and *is not recordable* to OSHA:

- | | |
|--|---|
| <ul style="list-style-type: none"> ■ Employee was present in the work environment as a member of the general public rather than as an employee. ■ Signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment. ■ Results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity. ■ Solely the result of an employee eating, drinking, or preparing food or drink for personal consumption. | <ul style="list-style-type: none"> ■ Solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours. ■ Solely the result of personal grooming, self medication for a non-work-related condition, or is intentionally self-inflicted. ■ Caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work. ■ The illness is the common cold or flu, or is mental illness. |
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1. OSHA Work-Related vs. OWCP Compensable (continued)

Employee checks into a hotel or motel for one or more days

When a traveling employee checks into a hotel, motel, or other temporary residence, he or she establishes a "home away from home."

- When the employee checks into the temporary residence, he or she is considered to have left the work environment. (not recordable)
- When the employee begins work each day, he or she re-enters the work environment. (recordable)
- Injuries or illness that result during a commute between the temporary residence and the job location are not work-related.

Employee takes a detour for personal reasons

Injuries or illnesses are not work-related if they occur while the employee is on a personal detour from a reasonably direct route of travel. (not recordable)

2. Determining New OSHA Case







New Case

An injury or illness must be considered as a "New Case" if:

1. The employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body.
2. The employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had **recovered completely** from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

3. General Recording Criteria

A work-related injury or illness meets the general recording criteria, and therefore is **OSHA recordable**, if it results in any of the following:

-  Death
-  Days away from work
-  Restricted work or transfer to another job
-  Medical treatment beyond first aid
-  Loss of consciousness
-  Significant injury or illness diagnosed by a physician or other licensed health care professional (LHCP)

Lost Workday/Restricted Duty vs. COP (continued)

Days away from work

- Every calendar day lost must be supported by medical documentation from a **licensed health care provider**
- For extended periods of time, an **estimate of the days** that the employee will be away is documented and then updated when the actual number of days is known

Restricted work or transfer to another job

- Intermittent periods of missed work for medical appointments are not considered lost workdays or restricted duty days unless the LHCP identifies disability.
- Lost work days and restricted duty day counts end after 180 days.

Continuation of Pay (COP)

- Only used for Traumatic Injuries when CA-1 is filed within 30 days from the injury date.
- Can be full day or partial day to support disability or time used for medical appointments.
- Every day of COP or leave in lieu of COP must be supported by medical documentation from a **qualified physician**
- Intermittent periods of COP may not include RDOs and holidays where evidence does not support disability on day before or after the RDO or holiday.
- COP Count ends after 45 days of use. Entitlement to Compensation is claimed on CA-7 and is only payable when authorized by OWCP.

Medical Beyond First Aid (continued)

Medical treatment is defined as the **management and care** of a patient to **combat disease or disorder**.

- **Non-medical treatment:** Visits to a physician or other licensed health care professional solely for **observation or counseling** and **diagnostic procedures**, such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils)
- **First aid medical treatment:** by itself does not make a work-related injury or illness recordable to OSHA. First aid medical treatment consists of specific treatments.
- **Medical Beyond First Aid:** All other types of medical treatment are considered to be **'Medical Beyond First Aid'** and make a work-related injury or illness OSHA recordable.

Differences in Terminology (continued)

First aid for OSHA Recordability is defined as:

- Using a non-prescription medication at nonprescription strength
- Administering tetanus immunizations
- Cleaning, flushing or soaking wounds on the surface of the skin
- Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™
- Using hot or cold therapy
- Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc.
- Using temporary immobilization devices while transporting an accident victim
- Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister
- Using eye patches
- Removing foreign bodies from the eye using only irrigation or a cotton swab
- Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means
- Using finger guards
- Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes)
- Drinking fluids for relief of heat stress

Differences in Terminology (continued)

First aid for FECA is defined as:

- Examination and/or treatment at the agency's medical facilities or by medical providers under contract to the agency, when the examination or treatment occurs during working hours beyond the date of injury
- Two or more visits to a medical facility for examination or treatment during non-duty hours beyond the date of injury, as long as no leave or COP is charged and no medical expense is incurred.

Sharing Data between OWCP and OSHA

- Forms CA-1 and CA-2 are completed by the employee to claim workers' compensation benefits for which they may be entitled as a result of the injury.
- Privacy Systems DOL/GOVT-1 authorizes disclosure of OWCP case information to federal agencies that employed the claimant at the time of the occurrence or recurrence of the injury or occupational illness in order to manage the workers' compensation claims.
- DOL/GOVT-1 does not include satisfying the Agency's obligation to determine OSHA recordability and create an OSHA 301 as part of the routine uses.
- The source of information for recordkeeping must come from a supervisor's investigation of the incident and monitoring of that employee's work status through timekeeping.

Questions & Answers
