



What Texas Construction Contractors Need To Know About OSHA's New Interpretation on Workplace Injury Record-Keeping

Earlier this year, OSHA issued a Letter of Interpretation that should concern employers nationwide. The interpretation addresses whether an employer must record an employee injury caused by a personal e-cigarette's lithium-ion battery brought from home. Many employers would assume the answer is no. OSHA concluded otherwise. The reasoning has broad implications for how all employers evaluate and record workplace injuries.

The interpretation reinforces two critical principles under OSHA's recordkeeping standard. First, an injury is "work-related" if an event or exposure in the work environment caused, contributed to, or significantly aggravated the condition. Work need not be the **sole** or even **primary** cause. Second, OSHA applies a powerful "geographic presumption": if an injury occurs in the work environment, it is presumed work-related unless the employer proves otherwise. In the battery scenario, even though the item was personal and unrelated to job duties, the employee was at the workplace during assigned hours as a condition of employment. That was enough for OSHA to deem the injury recordable.

This interpretation means that recordable injuries on OSHA 300, 300A, and 301 logs are likely broader than many employers appreciate. Employers cannot dismiss an injury as non-recordable simply because the cause seems unrelated to the work performed. This is especially relevant for pre-existing conditions. If an employee with an old knee injury aggravates it while working, that aggravation is likely recordable because the work activity contributed, even if the underlying condition existed long before employment. Failure to record injuries accurately can result in per-instance penalties. If OSHA finds the failure willful, fines can exceed \$160,000 per violation, and multiple missed entries add up quickly. Employers should presume an injury is work-related if it occurs in the work environment. If an employer decides the injury is not work-related even though it occurred at the worksite, the employer should document the reasoning thoroughly before excluding it from the log. This includes gathering supporting information and medical records where appropriate.

But not all injuries at the job site must be recorded. OSHA and OSHRC (the agency that adjudicates contested OSHA citations) have found that some worksite injuries are **not** recordable. These include:

- An injury or illness from voluntary participation in a wellness program or in a medical, fitness, or recreational activity (such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball).
- An injury or illness that results solely from eating, drinking, or preparing food or drink for personal consumption, whether bought on the employer's premises or brought from home.
- An injury or illness that results solely from an employee performing personal tasks at the establishment outside assigned working hours.
- An injury or illness that results solely from personal grooming, self-medication for a non-work-related condition, or intentional self-infliction.
- An injury or illness caused by a motor vehicle accident on a company parking lot or access road while the employee is commuting to or from work.
- The common cold or flu. The regulation expressly states, however, that contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague may be work-related if the employee is infected at work. This same regulation justified recording COVID infections during the pandemic. Mental illness, unless the employee voluntarily provides the employer with a physician's or licensed health care professional's opinion stating that the employee has a work-related mental illness.

Given the breadth of this interpretation and the significant financial exposure for non-compliance, Texas construction contractors and other employers should not navigate these recordkeeping obligations alone. We encourage employers to consult with qualified labor and employment counsel to review current OSHA recordkeeping practices, assess whether past entries need correction, and develop protocols to evaluate injuries consistently under OSHA's actual regulatory framework. When recordability questions arise, we can help.

For further information on these developments, please contact [Tony Stergio](#).