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WORKPLACE SAFETY & ENVIRONMENTAL FLEET & TRANSPORTATION HUMAN RESOURCES



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Applying work-related exceptions
for the OSHA 300 Log

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Today's agenda

- Geographic presumption / No fault system
- Nine exceptions (some not complicated)
- Workplace "events" that trigger presumption
- Other issues like commute, travel, home workers
- How a typical day might look
- Resources (regulations, interpretations, FAQs, CPL)




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Geographic presumption and no fault

- **Note to §1904.0:** Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits.
- Could be work-related for OSHA but denied WC or vice versa
 - Motor vehicle accidents in company parking lots
 - Pre-existing conditions aggravated at work
- Presumption makes it easier! Percentage or rule violations?

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Resources

- CPL 02-00-135 (from 2004, archived 2025)
 - FAQs still on OSHA's site at [osha.gov/recordkeeping/resources](https://www.osha-slc.gov/recordkeeping/resources)
- CPL 02-00-172 (replacement effective 2025)

• *if the employer decides the case is not work-related, but OSHA disagrees and issues a citation for failure to record, then OSHA will have the burden of proving that the fatality, injury, or illness case was work-related*


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Preamble and more

- From January 19, 2001 (over 200 pages!)
 - [osha.gov/sites/default/files/laws-regs/federalregister/2001-01-19.pdf](https://www.osha-slc.gov/sites/default/files/laws-regs/federalregister/2001-01-19.pdf)
- 1904.7, General recording criteria
 - FAQ format, covers days away, restriction, first aid, medical treatment
- Letters of interpretation
 - [osha.gov/recordkeeping/interpretations](https://www.osha-slc.gov/recordkeeping/interpretations)
 - Only about 15 or so "good" letters

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Preamble and geographic presumption

- *if it would not have occurred but for the fact that the conditions and obligations of employment placed the claimant in the position where he or she was injured*
 - Example: Bee sting
- *[need not] result from conditions, activities or hazards that are uniquely occupational*
 - Horseplay, violence, etc.
 - Example: Spider phobia

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Events or exposures

- Focus “in the work environment” per 1904.5
 - Present as a condition of employment
- Not the cause (it’s no fault), unless exception applies
 - Knee “popped” while climbing stairs
 - February 28, 2014: Clarification of a pre-existing injury or illness and recordable events
- “Normal body movements ... such as walking, bending down or sneezing, are ‘events’ which trigger the presumption”
- Sneezing? What about a hiccup?

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The nine exceptions at 1904.5(b)(2)

1. Present as a member of the public
2. Non-work symptoms surface at work
3. Voluntary participation in a wellness, exercise, etc.
4. Result of eating or drinking
5. Doing personal tasks outside working hours
6. Grooming, self medication, self-inflicted.
7. Motor vehicle accident on property during commute
8. Common cold or flu
9. Mental illness


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Member of public; Cold or flu

- The employee was present in the work environment as a member of the general public rather than as an employee
 - Shopping on a day off
- The illness is the common cold or flu
 - Covid confusion
- Otherwise pretty simple
- I've never been asked about these


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Non-work condition at work

- Involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure.
 - Example: Epileptic seizure at work
- Allergies? Scents, chemicals, insects
 - August 23, 2016: Determining if the work-related injury or illness would apply to the work-related exception 1904.5(b)(2)(ii)
 - *the resultant injury must be solely due to the employee's non-work-related condition. ...the work environment can play no part in the injury.*
 - March 17, 2021: Determining the recordability of an illness when an employee uses a rescue inhaler following an exposure in the work place.


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Wellness and/or personal activities (two but distinct)

- Results solely 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.
 - Even when done on break, lunch, or other work hours!
- Solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours.
 - Applies ONLY outside of assigned working hours (to be defined!)


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Wellness and exercise (even during work hours!)

- Preamble: *when they are voluntary and are not being undertaken as a condition of work. For example, if a clerical worker was injured while performing aerobics in the company gymnasium during his or her lunch hour, the case would not be work-related.*
- Even company-sponsored flu shots, blood drive, sports, etc.
- Did not want to discourage wellness, walking, fitness
- Teambuilding not usually voluntary! (like go-cart)
 - February 24, 2009: Determining recordkeeping for work-relatedness of accident occurring during off-site event


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Personal: Non-work-related and outside hours

- Two elements required:
 1. Personal, non-work activity; and
 2. Outside of assigned working hours
- Work hours includes breaks and meals within (even unpaid)
- Knitting a sweater during lunch
 - March 10, 2005: Clarification of "assigned working hours" for determining recordability of injuries that occur during breaks in the normal work schedule.
- Knitting was not a wellness activity


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Personal: Outside work hours

- Work environment: Where one or more employees are working or are present as a condition of their employment
 - 1904.5(b)(1)
- Assigned working hours: Time employee normally expected to be present in the work environment
 - Not punching in or out (just present, like parking lots)
 - Exception applies only (1) before the start of the normal work schedule, or (2) after the normal work schedule has ended
 - February 16, 2010: Clarification of assigned working hours when recording work-related injuries/illnesses


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Assigned working hours

- Why the broad definition?
- Preamble: "OSHA believes that it would be difficult in many cases for employers to distinguish between work activities and personal activities."
- May be situations when something at work contributed, even during a personal activity (present for work)
- Examples:
 - Slip and fall in the bathroom before or after work
 - If parking lot covered, so is the bathroom break


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Now it's personal!!

- November 6, 2015: Clarification on the work-related exemption involving personal tasks outside the assigned working hours
- One employee loaning a plow to another
- Moving plow after work, one hurt his back
- OSHA: "the injured employee was not present in the work environment as a condition of employment"
- They could have left, done this at a house
- But if they'd moved the plow during lunch...


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Personal exemption: OSHA vs. more likely

- OSHA's examples show how narrow:
 - Using a meeting room outside working hours for a civic group and slipped and fell in the hallway, meets exception
- What if an employee forgets a cell phone or personal item?
 - Gets to the car, about the leave
 - Realizes forgot a phone, purse, lunchbox, etc.
 - Goes back inside for it, slips and falls
- If employee left property and came back, should meet
- If employee had not left, potentially still meets (see plow story)


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Arriving early for the exception?

- Employee's workday begins at 9:00
- Drops kid at school about 7:30
- Buys breakfast at a drive-through
- Arrives for work at 8:00, planning to eat in cafeteria
- Slips and fall (parking lot, elsewhere) injured
- Is that work-related?
- How early is NOT "present as a condition of employment"?
- End of day, could have gone home, but start of day?


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Eating and food preparation

- *Solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer's premises or brought in), like choking on a sandwich*
- *Note: If made ill by ingesting food contaminated by workplace contaminants (such as lead) or gets food poisoning from food supplied by the employer, the case would be work-related*
- **Almost anything other than contamination or food poisoning**
 - Allergic reaction to food supplied by employer? Meets exception
 - But be wary of bad potato salad!

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Grooming, self-medication, self-inflicted

- Next exception covers three areas
- Personal grooming: OSHA said clipping fingernails or showering (if not required to remove contaminants)
- Accidentally spraying the eyes with hairspray

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Grooming, self-medication, self-inflicted

- Self-medication: Intended for things like accidental double dose of medication for non-work condition
- Does not apply to intoxication by drugs or alcohol
 - Worker with hand injury tested positive for alcohol
 - Employer claimed treating alcoholism
 - March 26, 2016: Determining if the injury or illness would apply to the work-related exception
- “the work environment can play no part in the injury”
 - August 23, 2016: Determining if the work-related injury or illness would apply to the work-related exception 1904.5(b)(2)(ii)

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Grooming, self-medication, self-inflicted

- Intentionally self-inflicted: Like attempted suicide while at work
- Does NOT apply to unintentional injuries
 - Employee learned he was about to be downsized
 - Punched a cabinet and broke a bone in his hand
 - He “reacted without thought of injuring himself. Therefore, the injury was not **intentionally** self-inflicted and ... work-related.”
 - March 31, 2009: Clarification of the term self-inflicted as used in the Recordkeeping standard
- Or accidentally shooting yourself!

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Motor vehicle accidents and commuting

- 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
- FAQ 5-9: Driver hits walking employee, still exempt
- Preamble: car accident while arriving at work or while leaving the company's property at the end of the day, or while driving on his or her lunch hour to run an errand, not work-related
- Obviously, home to work commute not in work environment
- Employees decide the duration of their commute (residence)


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Commute vs. business travel

- Ordinary or normal commute
- Easy when same location every day
- Even to different locations (jobsites) each day
- Not travel between job sites
- Beyond ordinary?
 - Not really time or distance, but frequency?
 - Once per month probably not ordinary


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Travel status

- 1904.5(b)(6) travel “in the interest of the employer”
- Checking into hotel leaves work environment
 - Home away from home
- Personal detour from a reasonably direct route
 - Shopping, sightseeing, visiting relatives, etc.
 - Not just stopping for gas or meals
- Travel status until returning to the point of origin, like home!
 - February 12, 2015: Clarification of the applicability of the recording criteria for cases occurring while traveling to from an airport for work-related travel

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Reporting traffic accident injuries

- Injuries during travel are work-related and recordable
- Fatalities, hospitalizations, etc. are not “reportable” except in construction work zones
 - OSHA has no authority over traffic accidents, but does in work zones
- A “construction work zone” extends “from the first warning sign or rotating/strobe lights on a vehicle to the “END ROAD WORK” sign or the last temporary traffic control device.”
 - Question 39-2 at [osha.gov/recordkeeping/resources](https://www.osha.gov/recordkeeping/resources)

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Mental illness

- Not work-related unless the employee voluntarily provides an opinion from a physician or other licensed health care professional stating that the employee has a mental illness that is work-related.
- "I need a day off due to stress" is not work-related
- Uncommon but has happened
 - Explosion at a plant, no injuries
 - Survivors of workplace shooting incident

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Working at home: Linking workers

- Home is not an establishment, but not excluded either
 - Preamble: "OSHA has not excluded private homes from the definition of establishment"
 - But not considered an establishment for recordkeeping (no 300 Log)
- Must be linked to a fixed establishment
 - 1904.30(b)(3) You must link each of your employees with one of your establishments
 - Usually from where they get supervision or work instructions
 - Count as employee of linked location, even if in another state

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Working at home: Work-related

- 1904.5(b)(7) Incidents at home are work-related if:
 1. Employee is performing work for pay or compensation, and
 2. Directly related to performing work rather than home environment
- Is this work-related?
 - Dropping box of documents on foot: Yes
 - Tripping over family dog: No
 - Injury from faulty home wiring: No
 - Carrying box of documents to car, slip in driveway: No (but WC?)
 - Carrying laptop down a stairs: No

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Injured worker requests day off to recover

- Employee decisions cannot affect recordkeeping, BUT
- If employer agrees time off needed, days away
 - Good faith determination (approved or unexcused not relevant)
 - Or if employee "could have worked"
- Examples:
 - Employee with ankle injury expected back, but cannot drive
 - Employee with minor cut texts in, no further contact
- March 22, 2011: Recording an absence as days away when PLHCP recommends the employee return to work

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Follow-up doctor appointments

- Missing a day off work for a doctor appointment
- Not "days away" if time off needed only to be available
 - Was not the nature or severity of the injury
- Same concept for partial days, not "restricted" work
- November 30, 2005: Clarification on recording days away from work for follow-up visits to doctor while on restricted-duty job and recovery time to stabilize preexisting condition

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Summary: A typical day

<ul style="list-style-type: none"> Drives from home to work (commute vs. travel) Arrives in lot and parks Out of car, walks to building Uses bathroom before punching in Starts the workday (and takes breaks) 	<ul style="list-style-type: none"> Stays or leaves for lunch? (wellness, not personal) Finishes work, clocks out, uses the bathroom Walks to car (forgot something, possible personal) Gets in car and drives home
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