



STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
Division of Occupational Safety and Health
220 French Landing Drive, 3rd Floor
Nashville, Tennessee 37243-1002

MEMORANDUM

DATE: July 29, 2024
TO: All Concerned
FROM: Russell Dugan, TOSHA Standards and Procedures Manager
SUBJECT: TOSHA Interpretation 29 CFR 1904.39 vs TDLWD 0800-01-03-.05

On January 8, 2021, Federal OSHA issued a [letter of interpretation](#) (LOI) regarding 29 CFR 1904.39. The relevant information from the LOI states:

Scenario 1:

In employee is seriously injured and is admitted to the hospital. The company reports the in-patient hospitalization to OSHA within 24 hours of learning about it, in accordance with section 1904.39(a)(2). While hospitalized, the employee undergoes surgery. Five days after the surgery, the employee passes away due to this work-related injury. Based upon this scenario, **is the company required to make a “second report” of the initial injury** that resulted in the fatality?

OSHA’s Response:

It is not OSHA’s intention that related events, each of which are reportable under section 1904.39, be reported twice. If the in-patient hospitalization results in an amputation or a fatality, the employer does not need to report the second event as long as the employer initially reported the in-patient hospitalization within the 24-hour period...

The federal regulation creates a duty to report twice. OSHA’s “intention” to not create a double reporting duty, means that Federal OSHA is not going to enforce a requirement to report the fatality if the hospitalization was timely reported.

Tennessee OSHA (TOSHA) interprets TDLWD 0800-01-03-.05 to be applied as written, with the injury report (hospitalization, amputation, or loss of an eye) due within 24 hours, and the fatality report due within 8 hours. In the scenario above, TOSHA would require the second report. TOSHA concedes that in most events an injury that had been reported in a timely manner, that later becomes a fatality is unlikely to result in inspection activity if an inspection had not been initiated at the initial report.