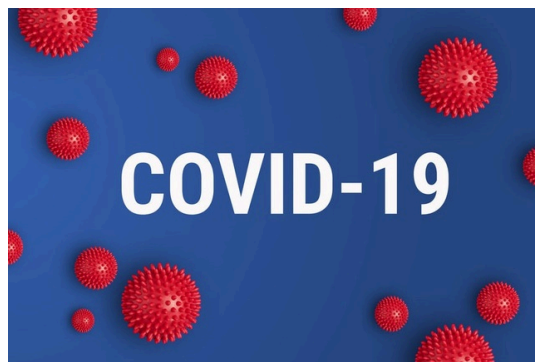


Check Local and State Health Department Rules: Some Require Reporting of COVID-19 Cases

Labor & Employment Law Update

By Peter Hansen and Sara Zorich on February 23, 2021



A question that employers often ask when someone in the workplace reports COVID-19 symptoms or a positive test is, who is the employer required to notify? Typically common sense and CDC guidelines have been that employers must engage in contact tracing and notify individuals who were in “close contact” with the person. In

recent months and weeks, local and state departments of public health have continued to issue guidance, and mandates, that employers must also identify and observe and sometimes try to interpret despite conflicting statements.

For example, in December 2020, the Illinois Department of Public Health (IDPH) revised its regulations to add COVID-19, SARS and MERS to the list of Class I(a) diseases that “shall be reported immediately (within three hours) by telephone, upon initial clinical suspicion of disease to the local health authority, which shall then report to the IDPH immediately (within three hours.) Ill. Admin. Code tit. 77, § 690.100. For context, Class I(a) diseases include Anthrax, Plague, Smallpox, and suspected bioterrorist threats or events. The reporting of Class I(a) diseases has historically been the responsibility of the hospital, physician or medical provider who treats or confirms an individual’s positive tests result for such a disease. However, the applicable regulation does have a catchall provision that places reporting responsibility on “Any other person having knowledge of a **known or suspected case** or carrier of a reportable communicable disease or communicable disease death.” Ill. Admin. Code tit. 77, § 690.200. Taken together, these provisions arguably require employers who know of a “known or suspected case” of COVID-19 to immediately report the information to their local health authority.

To further complicate the matter, the IDPH updated its “Guidance for Employers and Employees on Workers’ Rights and Safety” webpage on or about January 7, 2021 to state the following:

“If two or more employees report having COVID-19 related symptoms or test positive for COVID-19, the employer must notify their local health department within 24 hours of being informed of the presence of COVID-19 symptoms or positive test results.”

This is a pretty significant change as it modifies the reporting from voluntary to mandatory and is unclear regarding the time period for the two cases occurring (e.g. whether it is two cases over 14 days, two months, or since March 2020). That said, under CDC guidelines for contact tracing and the guidelines of some local public health departments it is reasonable to view the applicable time period for determining whether reporting is required under IDPH regulations as a 14 day period.

To add further confusion, local public health departments may have a higher or lower standard. For example, the City of Chicago and Kane County, Illinois health departments still advise businesses that they may voluntarily report employees with symptoms or confirmed cases, but are not required to do so. While in others areas, like Winnebago County, Illinois, the local health department is telling employers that they are required to report when one (1) or more employee develops COVID-19 symptoms or receives a positive test result, and are requiring employers to submit information regarding their businesses and the individual(s) at issue (including their symptoms and demographics).

Ultimately, no matter the standard for reporting, the employer is required to cooperate with local public health authorities in the investigation of cases, suspect cases, outbreaks and suspect outbreaks. This is fairly consistent throughout the United States.

What happens if you do not comply with reporting or an investigation? – It depends on the state and local laws and regulations regarding the violations of public health laws, but generally violations can result in fines, criminal charges and even result in a business being temporarily closed down. For example, under Illinois law, failure to comply may result in a Class A misdemeanor and the IDPH and local health department have the ability to order a business be closed if it deems immediate action is required to protect the public.

BUT WHAT DOES THIS MEAN WITHOUT THE LEGALESE?

1. Employers **MUST** be aware of what requirements or guidance their local public health department has regarding reporting cases of COVID-19 **AND** should take steps to comply with both the state and local requirement regarding reporting when employees are suspected or confirmed to have COVID-19.

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2. Documentation through COVID-19 Questionnaires for employees who report symptoms will become even more important. Questionnaires should include questions not only about what symptoms an employee has, but where the employee has been in the last 14 days; whether the employee or family members have interacted with individuals outside of their home for more than a cumulative 15 minutes in a 24 hour period; whether the employee or family members have visited stores or other locations within 10 or more people; etc.
3. Employers should recognize the potential risks, which may include fines, criminal prosecution and even being shut down, when responding to state and local public health departments' requests for additional information and investigations. Any concerns should be vetted through competent risk management consultants and experienced legal counsel.

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