

What to do When Your Employee Tests Positive for COVID-19

Labor & Employment Law Update

By John Hayes on April 30, 2020

With the constantly shifting state and local stay-at-home orders and the potential relaxing of these orders on the horizon, the question for employers still remains: What do we do if an employee has COVID-19?

Once an employer receives a report that an employee has tested positive for or is presumed to have COVID-19, the employer should do the following:

- Instruct the infected employee to stay home for the longer of the period of time recommended by his or her health care provider or the applicable health department or until 1) at least 3 days (72 hours) have passed since resolution of fever without the use of fever-reducing medications AND improvement in respiratory symptoms (e.g., cough, shortness of breath); and 2) at least 7 days have passed since symptoms first appeared. Employers may not disclose the identity of the employee diagnosed with or presumed to have COVID-19. Employers are also required to maintain the privacy of any health information they gather related to an employee's medical condition or their symptoms, and any such documentation should be kept in a private health folder, separate from the employee's personnel file, with limited access by only critical human resource staff.
- Interview the infected employee to determine all co-workers, clients, vendors, or guests with whom the employee may have come into close contact during the 14-day period prior to the positive test or presumption of being positive for COVID-19 (the "Incubation Period"). "Close contact" means being within six feet of the sick employee for a prolonged period (10-30 minutes). The employee should also be asked to identify all areas within the workplace where he or she was physically present during the past 14 days and any employees with whom he or she shared a workspace or equipment. (The local health department may conduct this interview and provide the employer with this information.)
- Contact directly each close contact and each co-worker who shared a workspace with the sick employee and advise that a person with whom they have been in recent contact and/or with whom they recently shared a common work area has been diagnosed with COVID-19. Instruct them that

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they are to remain out of the office for at least 14 days since the last contact with the infected employee and to work remotely, if possible. The co-workers should be encouraged to self-isolate and seek all medical care and testing that they feel may be appropriate. (The local health department may order the employees to be off work and inform the employer that it has done so.) It should also be noted that pursuant to recent CDC guidelines, under certain circumstances, an employer may allow an employee who is asymptomatic but was exposed to return to work.

- Consider notifying clients, vendors and/or guests who may have been exposed to the diagnosed employee, while maintaining confidentiality.
- Consider the wage and hour issues, such as mandatory paid sick leave, if the infected employee and close contacts are not able to work remotely and communicate the pay policies to employees pursuant to the FFCRA.
- Consider issuing a general notice to the workforce that an employee has tested positive for or is presumed to have COVID-19 (without identifying the employee). Any such notice should reassure employees that, unless the employee has been notified directly by the employer, the employee is not believed to have been in close contact with or shared a common workspace with the infected employee. Employees should be told all the steps the employer is taking to ensure their safety and should be advised to monitor themselves for symptoms of COVID-19 and reminded not to come to work if they are sick.
- Shut down those areas of the workplace identified by the infected employee as areas that he or she used until those areas can be cleaned in accordance with CDC guidelines.

While employers may require a doctor's note permitting an employee to return to work after recovering from COVID-19 or being mandatorily quarantined, such a requirement may not be practical. Acceptable alternatives include relying on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have COVID-19.

State, federal, and local discrimination laws remain in place and apply to harassment related to COVID-19, which may take the form of race and national origin harassment. Employers should inform all employees that such harassment will not be tolerated.

Employers should take action immediately in response to an employee who reports a positive test for or a presumption of COVID-19. Employers should be flexible and efficient in order to maintain a safe workplace and allow the focus to be on the work of the company going forward.