

## Employer Checklist for Responding to a Positive COVID-19 Test

### Related Practice Areas

- Labor & Employment

Employers should consider the following when handling an employee who is either “suspected, but unconfirmed” of having COVID-19 (i.e. person with symptoms or who has been exposed to a confirmed case, but not confirmed themselves) or who has tested positive for COVID-19. Employers should also note that these are general principles that can change rapidly depending on the specific circumstances and location.

Immediately remove the employee from the workplace. If possible, send employee home by means other than public transportation.

If the source of infection is known, identify if it was at the workplace or outside.

- If the infection was contracted inside the workplace:
  - Notify workers’ compensation carrier;
  - Place the employee on workers’ compensation leave (with pay); and
  - Record the infection in the employer’s OSHA 300 log and complete 301A or comparable form.

If the source of the infection is unknown or if the infection was contracted outside the workplace:

- Is employee eligible for emergency paid sick leave? Effective April 1, 2020, the recently passed Families First Coronavirus Response Act (FFCRA) requires employers with less than 500 employees to provide employees with two weeks (80 hours) of paid leave at the employee’s regular rate of pay where the employee is unable to work because the employee is quarantined and/or experiencing COVID-19 symptoms and seeking a medical diagnosis.
  - If yes, place on emergency paid sick leave.
  - If no, place on other leave.
- Is employee eligible for FMLA?
  - If yes, place on FMLA leave. FMLA leave can run concurrently with emergency paid sick leave.
  - If no, consider what other types of leave may be available should the employee require more than 80 hours of paid leave. This should include accrued sick or vacation time. However, note that some states (like California) may not allow an employer to require an employee to use paid sick leave for COVID-19.
- If the employer offers short term disability, determine if and when employee is eligible.

Notify employee’s manager(s) or supervisor(s) only that employee is on a leave of absence for non-disciplinary purposes. The Equal Employment Opportunity Commission (EEOC) has issued guidance applicable to steps employers should take regarding COVID-19. Consistent with the guidance, supervisors and managers may be told about necessary restrictions on work duties and necessary accommodations.

Contact public health authorities and follow their recommendations. You may disclose the identity of the employee in response to any required notification to OSHA (i.e. if the employee was infected as a result of performing work related duties) and to state and local health departments that are collecting information about the spread of the virus. There is no obligation to report a suspected or confirmed case of COVID-19 to the CDC. (The employee’s health care provider has that reporting requirement.)

Notify employee’s co-workers who may have come into contact with employee at work within the

past 14 days that they may have been exposed to COVID-19 and may wish to see a health care provider. If possible, ask the infected employee if he can help identify the coworkers he came into contact with in the past 14 days.

- Not required to notify other office locations, unless the employee visited those sites within past 14 days.
- DO NOT identify the infected employee by name.
- To the extent reasonably possible, avoid making any direct or indirect references that would lead coworkers to guess the identity of the employee.
- For employees who had close contact with employee in past 14 days, send them home for a 14-day self-quarantine. Quarantined employees who are unable to telework may be eligible for paid/unpaid leave based on federal/state/local laws. For instance, effective April 1, 2020, the recently passed FFCRA requires employers with less than 500 employees to provide employees with two weeks (80 hours) of paid leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined and/or experiencing COVID-19 symptoms and seeking a medical diagnosis.

Notify known customers, vendors, or third parties with whom the employee may have come into contact with at work (including off-site work contacts and building management, if applicable) within the past 14 days that they may have been exposed to COVID-19 and may wish to see a health care provider. If possible, ask the infected employee if he can identify the customers, vendors, or third parties he came into contact with in the past 14 days.

- DO NOT identify the infected employee by name
- To the extent reasonably possible, avoid making any direct or indirect references that would lead the person to guess the identity of the employee.
- There is no guidance on how far a company should investigate for third parties who may have come into contact with an employee through work. It is safe to include any parties on the employee's work calendar, in visitor logs, or otherwise readily available or known.

Clean or arrange for a professional cleaning of the employee's workspace, immediate surrounding area, and areas likely visited by the employee (common spaces, breakroom, elevators, restrooms, etc.)

Respond to inquiries by CDC or public health authorities as/if received.

- The employer is allowed to disclose the identity of the employee and protected health information to CDC and/or public health authorities.

## Returning to Work

For employees who were considered "suspected, but unconfirmed," if at any time, the COVID-19 test proves to be negative, the employee may return to work, provided that he immediately presents such documentation from his health care provider.

- Notify employee's manager(s) or supervisor(s) that the employee tested negative and that the employee may return to work.
- Notify employee's coworkers who may have come into contact with employee at work within the past 14 days that the employee tested negative. For employees who were quarantined because of this potential exposure, they no longer need to quarantine.
- Notify known customers, vendors, or third parties with whom the employee may have come into contact with at work that the employee tested negative.

For other employees who were not tested but considered "suspected, but unconfirmed" or were confirmed positive, employers should consult the [CDC's guidance](#) before allowing the employee to return to work. Note that the CDC will likely be updating this guidance as appropriate.

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