

## **COVID-19 – THE ROAD TO REOPENING FOR BUSINESSES**

As businesses anxiously await and anticipate their opportunity to reopen/resume operations, along with the eventual return of their employees to the workplace, there are many employment law and personnel related concerns that should be considered.

The Center for Disease Control (CDC), OSHA, and many state and local agencies, have put forth considerable guidance to help employers better understand the nature of the virus and resources designed to address the concerns related to providing a safe and healthy work environment for employees and visitors.

The CDC's FAQ is one of the best resources to address a variety of issues. The FAQ can be found here:

<https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html#Reducing-the-Spread-of-COVID-19-in-Workplaces>

### ***RETURN TO WORK ASSESSMENT***

The first undertaking is for employers to do an assessment which should focus not only on how to resume business operations, but also on what will re-hiring or re-staffing look like and how can employers ensure a safe workplace, along with a myriad of other issues in these uncertain times.

The CDC's "Roadmap" to reopening, provides general information along with some industry specific guidance (e.g. auto dealerships, logistics and warehousing, manufacturing, and others) The Roadmap can be found here: <https://covid19.ca.gov/roadmap/#guidance>

The CDC has stated that employers, when reopening, should focus on the following:

- Promoting healthy hygiene practices
- Intensifying cleaning and disinfecting procedures (e.g., small static groups, no large events)
- Canceling non-essential travel, and encouraging alternative commuting and telework
- Spacing out seating (more than 6 feet) and staggering gathering times
- Restricting use of any shared items and spaces
- Training all staff in above safety-actions

Some additional strategies that employers should consider include the following:

- **Appoint a COVID-19 workplace coordinator:** Designate someone in management as the "go to" person so that employees know that there is someone they can go to with issues, concerns, reports of illness, etc. This person would be responsible to keep up-to-date on CDC, OSHA and other state, federal and local guidelines

regarding COVID-19 issues and should be responsible for establishing communication with state and local health authorities if an exposure in the workplace occurs.

- **Implement basic infection prevention measures:** This includes but is not limited to frequent and thorough hand washing, respiratory etiquette, adequate tissues and trash receptacles for workers, customers, and the public. If necessary, retain an industrial cleaning company to do a deep clean of the facility on a regular basis; hire a person to do nothing but clean throughout the day to ensure the surfaces in and around the workplace have been disinfected.

- **Establish employee health checks:** Employees should not be permitted to return to work until the criteria to discontinue home isolation are met, in consultation with healthcare providers and state and local health departments. Employees who are well but who have a sick family member at home with coronavirus should notify their supervisor and follow CDC recommended precautions.

- Do not let anyone that has symptoms return to work until cleared by a medical provider (which may continue to be an issue since it is difficult to get appointments - but employers can accept documents from a tele-medical provider).

- The CDC has issued guidance on the "Discontinuation of Isolation for Persons with COVID-19 - Interim Guidance" which can be found here:

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>.

- **Remove sick employees from the workplace:** Once an employee is determined to be infected, they must immediately leave the workplace. Then, Employers should inform fellow employees of their possible exposure to the coronavirus without violating the confidentiality required by the ADA. Employers may take the temperature of their employees; however, this information is considered "medical information" and the Employer must undertake appropriate and reasonable measures to ensure the confidentiality of such information. It is also important to know that there are other symptoms of COVID-19, so an elevated temperature is not a fool-proof measure of the health of your employees.

- **Identify where and how employees could be exposed to COVID-19 at work:** OSHA offers guidance for employers, including steps to take for jobs categorized by exposure risk. OSHA recommends creating an infectious disease preparedness and response plan that considers and addresses the level(s) or risks associated with various worksites and job tasks workers perform at those sites. The Guidance can be found here: <https://www.osha.gov/Publications/OSHA3990.pdf>

- **Contact Tracing:** Develop and implement policies and procedures for workforce contact tracing following a positive COVID-19 test in the workplace. Employers should continue to ask infected employees to identify all individuals who worked in close proximity (within six feet) for a prolonged period of time (10 minutes or more to 30 minutes or more depending upon particular circumstances, such as how close the employees worked and whether they shared tools or other items) with them during the 48-hour period before the onset of symptoms.

- **Create screening measures to identify sick employees as soon as possible:** This can include temperature checks and symptom inquiries. Employers should limit questions to the CDC currently recognized coronavirus symptoms: Cough, Shortness of breath or difficulty breathing, Fever, Chills, Repeated shaking with chills, Muscle pain, Headache, Sore throat or Loss of taste or smell during the last 14 day period of time.
- **Minimize face-to-face contact :** This may require re-arranging the worksite to implement social distancing at work. Consider spacing out desks, closing or limiting access to the lunch/break room, set up space outside for meals and breaks.
- **Follow CDC guidelines for cleaning areas where an infected employee has been:** The CDC guidelines can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>
- **Update existing travel policies to reflect CDC Traveler’s Health Notices:** Develop policies around how employees should travel safely. Consider whether travel is necessary and use teleconferencing whenever possible. The CDC guidance can be found here: <https://wwwnc.cdc.gov/travel>
- **Change Meeting Protocol:** Take care when attending meetings and gatherings. When in-person meetings must be held, conduct them in open, well-ventilated spaces while maintaining social distancing.
- **Personnel Considerations:** Changes to some of the personnel practices may be required as work is resumed, and employees are offered reinstatement. A few issues to consider are:
  - **Employee’s Refusal to Return to Work:** Some employees may continue to be fearful or apprehensive of contracting COVID-19 and refuse to return to work. Such refusal could be considered a complaint regarding workplace safety under OSHA. Plan your response accordingly for these situations.
  - **Refusal to Reinstatement An Employee Who Had COVID-19:** Employers should not refuse to reinstate or rehire an employee who was infected with COVID-19 as such action could be considered disability discrimination under State and Federal laws prohibiting discrimination based on disabilities. Any adverse action against an employee who had COVID-19 may expose the employer to potential liability. Refer to the Department of Fair Employment and Housing’s (“DFEH”) FAQs for further guidance on these issues.
  - **Posters, Notices & Documents to Provide Employees:** The Families First Coronavirus Response Act Notice must be displayed in the workplace in a conspicuous place. Many local public health agencies have their own posters that are required to be displayed in the workplace. The Los Angeles County Department of Public Health’s Notice to Consumers should also be displayed in the workplace. A copy can be found here: <http://publichealth.lacounty.gov/media/Coronavirus/NoticeToCustomers.pdf>

### ***HOW DO I DETERMINE IF SOMEONE MAY HAVE BEEN EXPOSED?***

Employees may have been exposed if they were in “close contact” of someone who is infected, which is defined as being within approximately 6 feet (2 meters) of a person with COVID-19 for a prolonged period of time.

If an employee may have been exposed, employers should follow these protocols:

- Potentially exposed employees who have symptoms of COVID-19 should self-isolate and follow the CDC recommended steps (referenced above).
- Potentially exposed employees who do not have symptoms should remain at home or in a comparable setting and practice social distancing for 14 days.

All other employees should self-monitor for symptoms such as fever, cough, or shortness of breath. If they develop symptoms, they should notify their supervisor immediately and stay home.

### ***DEALING WITH CASES OF COVID-19 IN THE WORKPLACE***

Employees who have some of the recognized symptoms of COVID-19 when they arrive at work or those who become sick during the day should immediately be separated from other employees, customers, and anyone else in the workplace and sent home.

#### ***Employees Who Tested Positive:***

- **Employees with Symptoms and Confirmed Case of COVID-19:** Employees should not return to work until they have met the criteria to discontinue home isolation, which includes a symptom-based strategy or a test-based strategy.
  - **Symptom-based strategy:** Persons with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue isolation under the following conditions:
    - At least 3 days (72 hours) have passed since recovery, defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and
    - At least 10 days have passed since symptoms first appeared.
  - **Test-based strategy:** Persons who have COVID-19 who have symptoms and were directed to care for themselves at home may discontinue isolation under the following conditions:
    - Resolution of fever without the use of fever-reducing medications and
    - Improvement in respiratory symptoms (e.g., cough, shortness of breath), and
    - Negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected  $\geq 24$  hours apart (total of two negative specimens).
- **Employees who DID NOT have symptoms, and have not had to test to determine if they are still contagious, and stayed home can return to work under the following conditions:**
  - At least 10 days have passed since the date of their first positive test and

- They continue to have no symptoms (no cough or shortness of breath) since the test.
- **Employees who had a test to determine if they are still contagious, can return to work after:**
  - They have received two negative tests in a row, at least 24 hours apart.
  - If they subsequently develop symptoms, follow guidance above for people with COVID-19 symptoms.

***Employees Not Tested:***

- Employees with COVID-19 who have stayed home can return to work under the following conditions:
  - If they have not had a test to determine if they are still contagious, they can return to work after these three things occur:
    - They have had no fever for at least 72 hours (without the use of medicine that reduces fevers) AND
    - Other symptoms have improved (for example, symptoms of cough or shortness of breath have improved) AND
    - At least 10 days have passed since their symptoms first appeared.

**No Doctor's Note Required**

Employers should not require sick employees to provide a COVID-19 test result or healthcare provider's note to validate their illness, qualify for sick leave, or return to work. Healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely manner. However, testing has become more available and most test results are provided within 48-72 hours; if an employee has been tested you can ask for the results but should not require the employee to provide you with a copy.

***ADDITIONAL RESOURCES***

The following additional websites are great resources for employers in all industries to navigate the myriad of regulations and obligations as we seek to get "back to normal".

**OSHA:** Guidance on Preparing Workplaces for COVID-19

<https://www.osha.gov/Publications/OSHA3990.pdf>

**Los Angeles County Dept. of Public Health - Revised Order May 26, 2020 on Reopening**

[http://publichealth.lacounty.gov/media/coronavirus/docs/HOO/HO\\_Order\\_Reopening\\_Safer\\_at\\_Work\\_and\\_in\\_the\\_Community\\_05262020\\_FINAL.pdf](http://publichealth.lacounty.gov/media/coronavirus/docs/HOO/HO_Order_Reopening_Safer_at_Work_and_in_the_Community_05262020_FINAL.pdf)

**Los Angeles County Protocols for Office Worksites**

[http://publichealth.lacounty.gov/media/coronavirus/docs/protocols/Reopening\\_OfficeBasedWorksites.pdf](http://publichealth.lacounty.gov/media/coronavirus/docs/protocols/Reopening_OfficeBasedWorksites.pdf)

**Centers For Disease Control and Prevention Resuming Business Toolkit**

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/Resuming-Business-Toolkit.pdf>

**IMPORTANT NOTE AND DISCLAIMER**

Please note, the above is not an exhaustive list of all the changes to the law or resources for individuals and businesses. These new laws bring new challenges that often need to be handled on a case-by-case basis. Given the current fluid and rapidly evolving nature of the Coronavirus COVID-19 pandemic in the United States, this memo constitutes our preliminary analysis and is provided solely as a reference tool to be used for informational purposes and is subject to change based on evolving information. Therefore it should not be construed or interpreted as providing legal advice related to any specific case or cases. Please know that we are here for you during this time.

We are actively monitoring these changes daily and are available to provide any feedback, advice, and best practice tips to you as we navigate these trying times together. We are also available to draft policies or leave related documents as needed. Our firm is actively operational in every aspect. We are all working statewide and are available to address your concerns and questions. We are confident that we can get through these difficult times together. Should you have any questions or concerns, please feel free to contact us. We are only an email or phone call away.

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