

Workplace Reopened– Now What? Practical Tips for COVID-Related Issues

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CVID-19

What we're going to cover:

- ✓ **Managing time off and remote work requests**
 - Legal Entitlements
 - Other Considerations
 - Accrued employer-provided leave
- ✓ **What to do if there is a workplace exposure**
 - CDC Guidelines
 - Notification & confidentiality
- ✓ **Deciding how and when to require testing**
 - Permissibility
 - Practical Tips
- ✓ **OSHA Safety and Record-Keeping**
 - Legal Requirements
- ✓ **Next Steps After a Vaccine is Introduced**
 - What we expect
 - Potential policies
- ✓ **Your Questions**

MANAGING TIME OFF AND REMOTE WORK REQUESTS

Managing COVID-Related Leave

- **Family First Coronavirus Relief Act (FFCRA)**
 - Employers with fewer than 500 employees
 - Emergency Paid Sick Leave – up to 2 weeks
 - Expanded Family and Medical Leave – up to 12 weeks
 - Available only if unable to work from home
 - May be intermittent (if agreed)
 - Available until Dec. 31, 2020, unless extended
- **Family and Medical Leave Act (FMLA)**
 - Employee's health condition; family member's health condition
- **State & Local leave laws and COVID-19 ordinances**
- **Your Policies**

Managing Work From Home Requests

- **Legal Entitlements:**

- FFCRA/Other Paid Leave
- Accommodations (Disability, Pregnancy, Religion)
- Anti-Discrimination
- Impact of shutdown orders

- **Other Considerations:**

- Business needs
- Retention
- Precedent-setting
- Alternatives



Remote Work Policies

- **Wage and Hour Laws**
 - Recording and paying for time worked
 - Breaks
- **Information Security**
- **Employee Management**
- **Expense Reimbursement**
 - State law
 - Best practices



Managing Employee Leave

Accrued Employer-Provided Leave

- Require employees to use leave within designated period
- Deadlines to request leave
- Increased coordination of vacation schedules
- Instituting blackout dates
- Pausing or capping accrual
- Allowing additional carryover into 2021

WORKPLACE EXPOSURE

Exposures in the Workplace

Be Prepared

- Steps to promote physical distancing and reduce number of people in space
- Closing common spaces or limiting numbers
- Reducing opportunities to interact face to face
- Requiring face coverings & providing PPE
- Frequent, enhanced cleaning/disinfecting
- Symptom questionnaires/certification
- Training/policies
- Designated lead or coordinator

Exposures in the Workplace

Positive Case



vs.

Suspected Case

vs.

Exposure



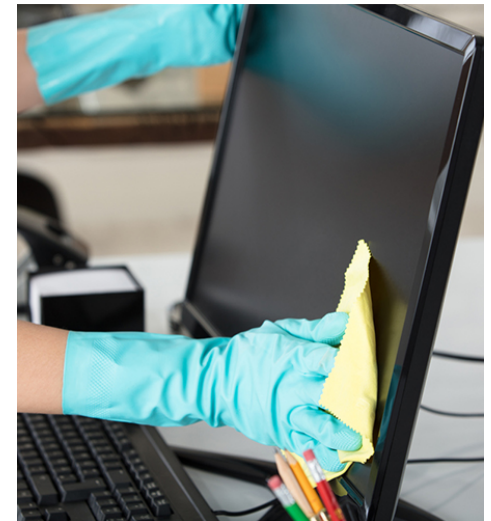
Exposures in the Workplace

Cleaning & Disinfecting

- If last contact was not in last 7 days ⇒ routine cleaning
- If last contact was in last 7 days ⇒ heightened cleaning
- Consult [CDC/EPA Guidance](#)
 - Which areas
 - How cleaned
- Plan ahead!

Communication Plan

- Message for employees who were in direct or close contact
- Message for other employees
- Do not share employee's name!



Exposures in the Workplace

Return to work

- [Current CDC Guidelines on Quarantine & Isolation](#)
 - If **infected and symptomatic** ⇒ at least 10 days from first symptom/diagnosis and no fever for 24 hours (w/o medication) and symptoms have improved
 - If **infected but no symptoms** ⇒ 10 days from positive test
 - If **exposed** ⇒ 14 days from last direct/close contact with infected person
 - *Note: do not need to quarantine based on exposure*
- Also consider state/local quarantine requirements

Note: Pre-return testing generally is not recommended

Exposures in the Workplace

Return to work

- Slightly different rules for [critical infrastructure employees](#)
 - Department of Homeland Security has developed a [list](#), as have many states and jurisdictions
 - May be permitted to continue to work following exposure if necessary provided they
 - remain asymptomatic and
 - take specific safety measures
 - Symptom pre-screening and monitoring
 - Cloth face covering
 - Social distancing
 - Clean and disinfect workspaces

Exposures in the Workplace

Be Aware of State-Specific Requirements

- Notice
- Cleaning/Disinfecting (CDC/EPA and Dept of Health standards)
- Quarantine/isolation requirements
- Allowing those able to work from home
- Reporting requirements

OSHA SAFETY AND RECORD-KEEPING REQUIREMENTS

OSHA Safety Requirements

- OSHA General Duty Clause (Section 5(a)(1)) – employers must furnish to each worker a place of employment which is “free from recognized hazards that are causing or are likely to cause death or serious physical harm.”
- OSHA Personal Protective Equipment standards – when job hazards warrant it, employers must furnish gloves, eye and face, and respiratory protection.
- Protection from hazardous chemicals used for cleaning and disinfection
- 28 state OSHA plans
 - Cal/OSHA has specific standards on Aerosol Transmissible Diseases for healthcare employers

OSHA Safety Requirements

- OSHA has issued 204 citations for violations related to the pandemic.
- Total amount of proposed penalties now \$2,856,533.
- Highest proposed penalty is \$32,965 (not reporting violation, PPE).
- Almost all of the establishments being cited are nursing homes or rehab/medical facilities. Exceptions are a cleaning company in CT (PPE) and a staffing company in NJ (not reporting violation).

OSHA Record Keeping – General Requirements

- Employers with more than 10 employees are required to keep a record of serious work-related injuries and illnesses unless they fall into various exempt industries.
- Records documented on OSHA Form 300 (Log of Work-Related Injuries and Illnesses), Form 301 (Injury and Illness Incident Report), and Form 300A (Summary of Work-Related Injury and Illnesses)
- Records maintained at worksite for five years.
- Summary posted of prior year injuries and illnesses. Copies must be provided upon request to current or former employees and their representatives.
- All employers must report any workplace incident that results in fatality, inpatient hospitalization, amputation, or loss of an eye (w/in 8 hours for fatality, 24 hours for others)

OSHA Record Keeping – COVID Requirements

- COVID-19 can be recordable illness
- All of the following conditions must be met:
 1. The case is a confirmed case of COVID-19 (tested positive)
 2. The case is “work-related”
 3. Case must meet recording criteria
 - Death
 - Days away from work
 - Restricted work or transfer to another job
 - Medical treatment beyond first aid
 - Loss of consciousness
 - Significant injury or illness diagnosed by a physician or other licensed health care professional

OSHA Record Keeping – COVID Requirements

- How do we know if an illness is “work related”? OSHA is requiring “reasonable determination” by employer
 - Usually sufficient (1) to ask employee how he believes he contracted COVID-19, (2) discuss with employee his work and out-of-work activities, and (3) review employee’s work environment (esp. other incidents)
 - Key facts:
 - Multiple cases among workers who work closely together
 - Timing after exposure to customer or coworker
 - Exposure to public in locality with infection
 - Must determine if workplace exposure is “more likely than not”

New California Reporting Rules (A.B. 685)

- Effective January 1, 2021 through January 1, 2023
- Requirements:
 - Employees and representatives must be notified within 1 business day of potential exposure to “qualifying individual”
 - Must describe COVID-19 related benefits and protections
 - Must describe disinfection and safety measures
 - Applies whether exposure is industrially contracted or not
 - Applies to all employers except those who conduct COVID-19 testing or screening or provide direct patient care or treatment to positive patients
 - Local public health agencies must be notified within 48 hours of an “outbreak” (3 or more employees w/in 2 week period)
- **Streamlines procedures for Cal/OSHA to shut down worksite due to imminent hazard**

TESTING

Testing

COVID Testing and Self-Certification

- EEOC has given employers broad rights in response to COVID
 - Can request medical information (self- certification)
 - Can require testing
 - Taking temperatures
 - COVID test – NOT antibody tests!
- Make sure you...
 - Limit who receives information
 - Keep medical information confidential
 - Do not disclose names of those with symptoms/infected

Testing

Practical Considerations

- **Pay:** If requiring testing – pay for test and for time spent taking
- **Results Timing:** Consider issues in timing of results
- **FFCRA Overlap:** Who is ordering test? (could impact FFCRA coverage)
- **Reliability:** Reliability is unclear, especially with faster tests

VACCINES

Recent Developments

- On November 9, Pfizer/BioNTech announced that efficacy of their vaccine during Phase 3 trial was above 90%
- On November 16, Moderna announced data from trials showed its vaccine to be 94.5% effective
- Both companies applying to FDA for emergency authorization to begin vaccinating public
- Hope is that 20 million doses in U.S. by sometime in December, with doses reaching into the billions next year. CDC claims “all adults should be able to get vaccinated later in 2021.”

A Few Words of Caution...

- **Transportation will be a challenge**
 - High temperatures to store (-4 degrees for Moderna, -94 degrees for Pfizer)
 - Shortage of medical glass to transport vaccine
- **All but one vaccine being developed require multiple shots (e.g. Pfizer requires two shots three weeks apart)**
- **First doses will likely go to those at highest risk – healthcare workers, emergency medical workers, nursing home residents**
- **Not clear how long immunity will last**
- **Estimated that 462 millions doses needed to achieve herd immunity**
- **Likely that current safety steps will exist alongside vaccine (e.g. masks, social distancing), at least for a time**

Mandatory Vaccination Programs

- No specific guidance from EEOC yet, but based on experience with flu and other vaccines, “mandatory” vaccination should be permitted
- Will need to provide accommodations for religious beliefs, pregnancy and disabilities unless undue hardship can be demonstrated
 - Must accommodate “sincerely held religious beliefs.” Some debate about how broad this category is (one court has found veganism to qualify as a sincerely held religious belief)
 - Will speculative harm suffice to show undue hardship? 1st Circuit held that employer could show undue hardship based on potential harm to patients of one employee not receiving flu vaccine

Mandatory Vaccination Programs

- Polarized atmosphere relating to COVID 19 may complicate mandatory vaccination policies
- Employers will want to begin thinking about whether vaccination will be required, how employees will seek accommodations, and whether exceptions will be permitted
- Bargaining with union may be necessary in those workplaces covered by collective bargaining agreements
- Answer to whether vaccination will be required may depend on industry (e.g. healthcare establishments/nursing homes versus everyone else) as well as to developments at state/local level

Questions?

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