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Mitigating Risks after Reopening in the U.S.: What to Do When an Employee Who Has Returned to the Workplace Has Symptoms of, Tests Positive for or Has Been Exposed to COVID-19

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As state and local stay-at-home orders are lifted, businesses across the U.S. are in the process of reopening or planning to reopen. Despite downward trends of new COVID-19 cases in some states, the COVID-19 pandemic continues. In light of this, employers need to be prepared to properly and safely respond to employees who have returned to the workplace and are experiencing COVID-19 symptoms, test positive for COVID-19 or have been exposed to COVID-19. Employers should be guided by applicable federal, state and local guidance as they develop a response plan, including guidance and directives issued by the Centers for Disease Control and Prevention (“CDC”), the Occupational Safety and Health Administration (“OSHA”), the Equal Employment Opportunity Commission (“EEOC”) and state and local authorities.

This Client Alert, which is based on information available as of its date of publication, sets forth certain considerations and steps that employers can take upon learning that an employee who is in the workplace or has recently been in the workplace (i) has COVID-19 symptoms, (ii) tests positive for COVID-19, or (iii) has been exposed to COVID-19.

1. DEVELOP A COVID-19 SAFETY AND RETURN-TO-WORK PLAN

As part of the re-opening process, employers should develop a COVID-19 plan that addresses matters such as safety rules, hygiene, social distancing and cleaning protocols. Certain states, including Massachusetts, New York and California, require a COVID-19 safety or prevention plan to be in place prior to a business reopening, consistent with the applicable state guidance. In Massachusetts, for example, and as discussed in [Goodwin's May 19, 2020 Client Alert](#), every business must, among other things, develop a written control plan that explains how it will comply with the Mandatory Workplace Safety Standards (available [here](#)) developed by the Massachusetts Department of Public Health and the COVID-19 Command Center.

The COVID-19 plan should include procedures for the prompt identification and isolation of both sick and exposed employees and should include the following requirements:

- Employees who develop symptoms that are consistent with COVID-19 cannot work outside of their homes and must notify their supervisor or another specified contact;
- Employees who develop symptoms that are consistent with COVID-19 while at the workplace must immediately notify their supervisor or another specified contact and leave the workplace without exposing others;
- Employees who test positive for COVID-19 must report this information to their supervisor or another specified contact and not come to the workplace until they can return in accordance with CDC guidance; and
- Employees who have been “exposed” to a person with COVID-19 must inform their supervisor or another specified contact and not come to the workplace for fourteen days.

To determine whether employees have been “exposed” to COVID-19, employers should look to CDC and any applicable state or local guidance. The [CDC’s public health guidance for community-related exposure](#) currently defines such exposure as being in “close contact” with an infected person, meaning being within six feet for 15 minutes or more, including during the period from two days before symptom onset, or, if an asymptomatic carrier, from two days before the specimen was taken and resulted in a positive test result. The 15-minute period is an operational definition and state definitions may differ. For example, Massachusetts uses a 10-minute exposure standard for office employees and a more robust definition of close contacts for the restaurant industry. The CDC notes that brief interactions are less likely to result in transmission, although if an infected individual coughs or sneezes directly in someone’s face exposure occurs.

The COVID-19 plan should include a return-to-work section that explains, consistent with CDC and state and local guidance, when employees who have COVID-19 symptoms, who test positive for COVID-19 or who have been exposed to COVID-19 are allowed to return to the workplace. See below for further discussion on returning to work.

Other important components that should be addressed in an employer’s COVID-19 plan include (i) contact tracing by the employer, (ii) the communication plan for notifying employees and others of a potential exposure, and (iii) when employee testing may be required by the employer.

Employers should be guided by current guidance from the CDC, OSHA, the EEOC and applicable state and local authorities when drafting their COVID-19 plan. It is likely that such guidance will continue to evolve as infectious disease experts and healthcare professionals learn more about COVID-19, making it important for employers to stay abreast of new guidance and update their policies accordingly. For example, the CDC has repeatedly updated its [list of COVID-19 symptoms](#), its [guidance for community-related exposure](#) and its criteria for [ending home isolation](#) for persons with COVID-19.

As described in [Goodwin’s April 19, 2020 Client Alert](#) on preparing for re-entry, employers should establish a COVID-19 re-entry task force that is responsible not only for developing a COVID-19 plan and preparing the workplace for re-entry, but also for monitoring applicable guidance so that policies can be updated and any additional changes to the workplace can be implemented in a timely fashion.

2. ENSURE THAT EMPLOYEES WITH COVID-19 SYMPTOMS, CONFIRMED COVID-19 CASES OR EXPOSURE TO COVID-19 DO NOT ENTER THE WORKPLACE OR PERFORM SERVICES OUTSIDE OF THEIR PLACE OF QUARANTINE

Employers should put mechanisms in place to ensure that employees who are experiencing COVID-19 symptoms, have a confirmed COVID-19 case or have been exposed to a person with symptomatic COVID-19 (including during the period from two days before symptom onset) or asymptomatic COVID-19 (including during the period two days before the date of specimen collection) do not expose others in the course of performing their job duties.

Self-Reporting and Screening Employees

Employers should train their employees on how to self-screen for COVID-19 symptoms. Such training may be required for employers in certain states or localities. For example, in California, all employers are required, prior to reopening, to train employees on how to limit the spread of COVID-19, including how to screen themselves for symptoms. In Massachusetts, businesses in the Office Spaces and Restaurants sectors are required to train their employees on self-screening at home, including temperature or symptom checks.

In addition to creating a self-reporting obligation, employers should consider requiring employees to complete a daily symptom/exposure questionnaire. Certain states and localities may require employers engaged in certain

industries to conduct some type of screening process prior to an employee commencing work. For example, in New York, businesses in several industries, including offices, are required to implement mandatory health screening assessments for employees, contractors and other visitors. These responses must be reviewed and documented daily by New York employers, and, depending on an individual's answers, the individual may not be permitted to return until at least 14 days of self-quarantine.

Sending a Sick Employee Home

If an employee develops COVID-19 symptoms while at the workplace, that employee should immediately be separated from other employees and individuals present at the workplace, consistent with CDC guidance. To the extent the ill employee is not already wearing a mask or face covering, the employee should put on a mask or face covering to help prevent respiratory droplets from traveling in the air and onto other people, unless the employee is unable to wear a mask or face covering due to a medical condition.

The employee should then leave the workplace and go home to isolate from others, unless more urgent medical care is needed, in which case the employee should seek medical attention. When leaving the workplace, the employee should maintain appropriate social distancing between themselves and any other individual. When commuting home, the employee should avoid public transportation, ride-sharing or taxis, if possible.

The employee should not return to the workplace until they satisfy the return-to-work criteria set forth in the employer's COVID-19 plan, which should reflect applicable CDC guidance and any state or local directives, as discussed below.

Requiring Exposed Employees to Quarantine

If an employer learns that an employee has had exposure to a person with COVID-19, the employer should instruct the employee to quarantine at home for 14 days after their last exposure. If the employer learns of this information while the employee is at the workplace, then the steps in the preceding section should be followed to send the employee home. The CDC recommends that during such quarantine, the individual should practice social distancing, self-monitor for symptoms, avoid contact with people at higher risk for severe illness if possible, and follow CDC guidance on "[What to Do If You Are Sick](#)" if COVID-19 symptoms develop.

Even if the employee does not become ill or experience any COVID-19 symptoms, the quarantined employee should not return to the workplace or perform services outside of the employee's place of quarantine until they have completed the 14-day period recommended by the CDC, which is based on the time it may take to develop COVID-19 if a person is infected. If the employee develops COVID-19 symptoms during the quarantine or tests positive for COVID-19 during the quarantine, the employee should promptly notify the employer and not return to the workplace until he or she satisfies the return-to-work criteria set forth in the employer's COVID-19 plan.

As an exception to the 14-day quarantine period for any exposed employee, the CDC guidance provides that an employee who has been exposed to COVID-19 but is also a [critical infrastructure worker](#) and remains asymptomatic may continue to come to the workplace if certain precautions are taken, including pre-screening the employee prior to starting work, requiring the employee to self-monitor for symptoms under the supervision of the employer's occupational health program, wearing a mask at all times while in the workplace and practicing social distancing.

Testing

Because the availability of viral testing for COVID-19 has greatly increased in the past few weeks, employers should consider encouraging or even requiring an employee with COVID-19 symptoms or an employee who

has been exposed to COVID-19 to take a COVID-19 viral test. If the test is positive, then the employer should follow CDC cleaning recommendations and gather further information from the employee to conduct contact tracing. The employer may have other notification and reporting obligations, as discussed below.

Because an employee who is quarantining due to potential exposure to COVID-19 may not initially test positive for COVID-19 due to the time it takes to develop COVID-19 if a person is infected, employers may consider encouraging or requiring a quarantined employee to take a COVID-19 viral test at the beginning of the 14-day quarantine so that an employer can immediately take appropriate steps for a confirmed COVID-19 case if the test is positive, and, to the extent the first test is negative, at the end of the 14-day quarantine prior to the employee returning to work. Even if the first test is negative, the employee should still complete the 14-day quarantine recommended by the CDC, which is based on the time it takes to develop COVID-19 if a person is infected.

Based on [OSHA's Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 \(COVID-19\)](#), effective May 26, 2020, and OSHA regulation 29 CFR § 1910.1020, employers that make, maintain, contract for or have access to an employee's COVID-19 medical test results, medical evaluations or medical treatment have an obligation under OSHA to retain those employee medical records for the duration of employment plus 30 years, unless an employee works for less than one year for an employer and the medical record is provided to the employee upon termination of employment. Employers that require employee testing for COVID-19 may want to consider instructing employees to notify them of the test result instead of mandating that employees provide a copy of the actual test result to avoid creating an OSHA medical record.

Teleworking While Isolating or Quarantining

Employees may be permitted or required to telework from home, depending on the nature of the employee's job duties and the severity of the employee's illness (if any). Employees who have tested positive for COVID-19 but are asymptomatic and employees who are quarantining but asymptomatic should be required to telework to the extent that they are able to do so consistent with their job duties and are not otherwise using an available leave or paid time off. Employees who have mild COVID-19 symptoms may also be able to telework during their isolation period.

Employees who are isolating or quarantining may be eligible for paid sick leave under their employer's policies or applicable law, including the Families First Coronavirus Response Act ("FFCRA"), which was summarized in [Goodwin's March 19, 2020 Client Alert](#).

3. ENHANCED DISINFECTING AFTER A POSITIVE COVID-19 TEST

The CDC recommends that businesses conduct routine cleaning and disinfecting during the COVID-19 pandemic in order to reduce the risk of exposure to COVID-19. State and local guidance may require businesses to establish certain regular cleaning protocols as part of their re-opening plans. For example, Massachusetts office spaces are required, among other things, to conduct at least daily cleaning and disinfection and to keep cleaning logs that include date, time and scope of cleaning.

If an employee who has been in the workplace tests positive for COVID-19, the employer should perform additional cleaning and disinfecting, consistent with CDC guidance and any state or local requirements. The CDC advises that in most circumstances, it is not necessary to shut down the entire workplace when an employer learns that an employee has tested positive for COVID-19. Instead, any areas used for prolonged periods of time by the sick employee should be closed off. While the CDC does not define "prolonged periods of time" in its guidance on cleaning and disinfecting, the CDC uses 15 minutes in its operational definition of "prolonged exposure" for purposes of potential exposure to COVID-19 in its guidance on [Public Health](#)

[Recommendations for Community-Related Exposure](#). Therefore, 15 minutes may be a helpful guideline when determining which areas of the business to shut down for cleaning.

The CDC currently recommends waiting 24 hours before cleaning and disinfecting areas used for prolonged period of time by the sick person in order to minimize the potential for exposure to respiratory droplets. If waiting 24 hours is not feasible, the CDC recommends waiting as long as possible before cleaning. During the waiting period, employers should open outside doors and windows to increase air circulation in these areas. Employers should consult the [CDC's detailed guidance on cleaning and disinfecting](#) for information on how to conduct such cleaning.

Note that if it has been seven days or more since the sick employee was present in the workplace, the CDC's position is that additional cleaning and disinfection beyond the business's regular cleaning protocol is not necessary.

4. NOTIFICATIONS AND CONTACT TRACING AFTER A POSITIVE COVID-19 TEST

Reporting to Public Health Authorities

Businesses should review applicable state and local guidance to determine whether they have an obligation to report to public health authorities a positive COVID-19 case of an employee who has been in the workplace. For example, New York businesses must immediately notify state and local health departments of positive COVID-19 cases and cooperate with contact tracing efforts. Massachusetts employers are advised to notify the local board of health to work with them to trace likely contacts of a COVID-19 positive individual in the workplace.

Gathering Information

When an employer learns that an employee who has been in the workplace has tested positive for COVID-19, the employer should take steps to gather information to enable it to perform contact tracing, which means determining which employees or other individuals may have been exposed to the sick employee in the workplace or during a work-related event. The best source of this information will likely be the employee. The employer should get in touch with the employee as soon as feasible (after the employee has safely left the workplace, to the extent that the employee learned of the positive test result while there) to ask the employee questions about their movements and close contacts in the workplace.

An employer should confirm with the employee the date of symptom onset (or, if the employee is asymptomatic, the date of positive specimen collection), and then ask the employee to recall their contacts in the workplace during the applicable time period. If an employee traveled on business or had a work meeting outside of the workplace during the applicable time period, then the employer should gather information about potential close contacts in those settings as well.

To better enable contact tracing as well as any enhanced cleaning, large employers should, to the extent feasible, limit employees' movements in the workplace to specific areas (e.g., a specific floor). Employers should consider requiring employees, particularly those who frequently hold work meetings outside of the workplace, to keep a log of any such meetings that includes the date and location of the meeting as well as the name and contact information of any individuals present. Employers should also consider keeping a log of all employees and non-employees who are in the workplace on a given day, including contractors, visitors, clients, vendors and suppliers. State and local guidance may require employers to keep certain logs. For example, Massachusetts office spaces are required to log everyone who comes into contact with the site in order to enable contact tracing. Employers may be further aided in their contact tracing efforts by newly available technology, such as wearable devices, location tracking apps and proximity sensors.

Notifying Employees and Other Individuals of Potential Exposure

Once the employer has gathered the relevant information and determined which individuals were in close contact with a sick employee during the two days before symptom onset (or, if the employee is asymptomatic, during the two days prior to positive specimen collection) until the time the employee has left the workplace to isolate, the employer should promptly notify those individuals of their exposure to COVID-19. The employer should have a communication plan in place for how to notify those individuals who have been exposed, including who is responsible for notifying those individuals and the form and content of the communication.

Employers should make these notifications in writing if possible and should consider developing two template forms of communication, one to employees who have been exposed to COVID-19 and another to non-employees (e.g., consultants, visitors, clients, vendors and suppliers). Such a communication should include the date and, if known, the time that the individual had close contact with the COVID-19 positive employee. Importantly, the communication must maintain the confidentiality of the employee's medical information pursuant to the Americans with Disabilities Act ("ADA"). This means that the identity of the employee cannot be shared with other employees or individuals. However, if the employee consents to having their identity revealed to facilitate the employer's contact tracing, then the employer could include such information in its communications to exposed employees and individuals. If an employee would like to consent to their identity being shared, then the employer should get such consent in writing prior to sharing the employee's identity.

The communication to exposed employees should include a requirement that the exposed employee quarantine for 14 days, consistent with CDC guidance. Employers should direct any quarantining employees to follow the CDC's guidance for community-related exposure, which currently directs individuals who have been exposed to COVID-19 to stay home until 14 days after their last exposure and maintain social distance from others at all times, to self-monitor for symptoms, to avoid contact with people at higher risk for severe illness from COVID-19 and to follow CDC guidance if symptoms develop. As discussed above, the employer may want to encourage or require exposed employees to get a COVID-19 test to determine whether they currently have COVID-19, although such employees would need to complete the full 14 day quarantine even if the test is negative. If an employer will require the exposed employee to take a COVID-19 test upon completion of the 14-day quarantine before returning to the workplace, then that requirement should be included in the communication. The communication should also direct any quarantined employees to telework if consistent with their job duties. If an employee is unable to telework, then the employee may be eligible for paid sick time under the FFCRA or pursuant to an applicable state sick time law or the employer's policies.

In the communication to non-employees who have had exposure to the sick employee, the employer should encourage those individuals to refer to the [CDC guidance for community-related exposure](#) and to quarantine for 14 days.

Notifying Building Owners

For employers that share or lease office space, a positive COVID-19 case in the workplace may trigger notification obligations to the building owner. Employers should review the terms of applicable state and local guidance, their lease and any new policies that have been implemented by the building owner in response to the COVID-19 pandemic to determine whether they are required to report a positive COVID-19 case. In accordance with the ADA's confidentiality requirements, the identity of the sick employee should not be revealed to the building owner. However, the employee's movements in the building can be described to the building owner so as to enable the building owner to determine whether other tenants should be notified or whether enhanced cleaning of common areas used by the sick employee, such as elevators or lobbies, needs to take place.

5. CONSIDER WHETHER ANY RECORDING OR REPORTING OBLIGATIONS HAVE BEEN TRIGGERED

OSHA Recording Obligations

Employers with 10 or fewer employees at all times during the previous calendar year and certain employers in low hazard industries (including most office jobs) have no OSHA recording obligation, and thus do not need to record workplace cases of COVID-19. For other employers, a workplace case of COVID-19 may, depending on the circumstances, trigger OSHA recording obligations. OSHA recently released [revised enforcement guidance for recording cases of COVID-19](#), effective May 26, 2020, that requires employers to record cases of COVID-19 if all of the following requirements are met:

1. The case is a confirmed case of COVID-19;
2. The case is work-related, as defined by 29 CFR § 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7, which requires an employer to consider an injury or illness to meet the general recording criteria if it (i) results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness, or (ii) involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in the circumstances set forth in (i).

A list of industries covered by OSHA's injury and illness recording obligations (unless they have 10 or fewer employees) is available [here](#).

Those employers that do have a recording obligation should, upon learning that an employee who has been in the workplace has tested positive for COVID-19, conduct an analysis to determine whether the employee's COVID-19 illness is recordable on the employer's OSHA 300 Log. With respect to 2. above, work-relatedness is normally presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception under the applicable regulation specifically applies. However, given the difficulty of determining work-relatedness during the COVID-19 pandemic, OSHA has exercised enforcement discretion regarding work-relatedness in the context of employee COVID-19 illness by establishing considerations to be applied by any Compliance Safety and Health Officer ("CSHO") who is assessing an employer's efforts in making work-related determinations. Accordingly, to the extent that OSHA investigates an employer's compliance with its recording obligations, the following considerations will apply:

- *The reasonableness of the employer's investigation into work-relatedness.* The OSHA guidance notes that employers should not be expected to undertake extensive medical inquiries, and that it is sufficient, in most circumstances, to (i) ask employees how they believe they contracted COVID-19, (ii) while respecting employee privacy, discuss with employees their work and out-of-work activities that may have led to their illness, and (iii) review employees' work environment for potential COVID-19 exposure, which should be informed by any other instances of workers in that environment contracting COVID-19.
- *The evidence available to the employer.* The work-relatedness analysis should be based on information reasonably available to the employer at such time. The OSHA guidance notes that if the employer later learns more information, then that information should be taken into account by the CSHO in determining whether an employer made a reasonable work-relatedness determination.
- *The evidence that COVID-19 was contracted at work.* The OSHA guidance explains that while there is no formula for determining work-relatedness, certain types of evidence may weigh in favor of or against work-relatedness. The guidance provides several examples, including that an employee's COVID-19 illness is likely work-related when several cases develop among workers who work closely together and there is no

alternative explanation; that an employee's COVID-19 illness is likely work-related if their job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation; that an employee's COVID-19 illness is likely not work-related if they are the only worker to contract COVID-19 in their vicinity and their job duties do not include having frequent contact with the general public, regardless of the rate of community spread; and an employee's COVID-19 illness is likely not work-related if they, outside the workplace, closely and frequently associate with someone (e.g., a family member, significant other, or close friend) who (i) has COVID-19; (ii) is not a coworker, and (iii) exposes the employee during the period in which the individual is likely infectious. The guidance also instructs CSHOs to give due weight to any evidence of causation pertaining to the employee's COVID-19 illness provided by medical providers, public health authorities or the employee.

The OSHA guidance states that if, after an employer makes a reasonable and good faith inquiry, it cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to the employee's COVID-19 illness, the employer does not need to record that illness. The OSHA guidance also explains that recording a COVID-19 illness does not, of itself, mean that an employer has violated any OSHA standard.

OSHA Reporting Obligations

All employers, regardless of size or industry, have a reporting obligation to OSHA pursuant to 29 CFR 1904.39 in the event a work-related illness results in a fatality, in-patient hospitalization, amputation or loss of an eye. However, a fatality only needs to be reported to OSHA if it occurs within 30 days of the work-related incident, and an in-patient hospitalization, amputation or loss of an eye is only reportable if it occurs within 24 hours of the work-related incident. Applying these regulations and time limitations to COVID-19, most positive COVID-19 cases, even if work-related, are unlikely to trigger a reporting obligation to OSHA.

In those limited circumstances where a COVID-19 fatality occurs within 30 days following an employee contracting COVID-19 in the workplace or an in-patient hospitalization occurs within 24 hours of an employee contracting COVID-19 in the workplace, the employer must immediately notify OSHA (within eight hours for a fatality and within 24 hours for an in-patient hospitalization).

Workers' Compensation First Report of Injury

Upon learning that an employee who has been in the workplace has tested positive for COVID-19, an employer should determine whether it needs to file a first report of injury for purposes of workers' compensation. Filing obligations for workers' compensation vary by state, so employers should review applicable state law and their workers' compensation policies to determine whether an obligation to file a first report of injury has been triggered. In Massachusetts, for example, an employer is required to file a first report of injury within seven days from the employer's receipt of notice of an employee's injury that is alleged to have arisen out of and in the course of employment and that incapacitates an employee from earning full wages for a period of five or more calendar days.

In response to the COVID-19 pandemic, some states have taken measures to make it easier for employees to get workers' compensation benefits when they contract COVID-19. California Governor Gavin Newsom signed an [executive order on May 6, 2020](#) that creates a time-limited rebuttable presumption that an employee's COVID-19-related illness arises out of and in the course of employment for purposes of awarding workers' compensation benefits to employees who are required to work outside of their homes during the state's stay-at-home order if certain requirements are satisfied. Employers should keep an eye out for further amendments to existing workers' compensation laws as the pandemic continues.

6. ALLOW THE EMPLOYEE TO RETURN TO WORK

Employers should ensure that employees who are experiencing COVID-19 symptoms, test positive for COVID-19 or have been exposed to an individual with symptoms or a confirmed case of COVID-19 isolate at home and not return to work until they have met the [CDC's criteria to discontinue home isolation](#) (the "Criteria").

The Criteria permit "symptom-based" and "test-based" strategies for discontinuing home isolation that vary depending on whether the person has displayed symptoms, tested positive for COVID-19 or has been exposed to COVID-19 (without displaying symptoms or a positive test). The Criteria provide that a decision to end an employee's home isolation should be made in consultation with a health care provider and state and local health departments, including as to whether sufficient local testing resources are available. As noted earlier in this Alert, because the availability of viral testing for COVID-19 has greatly increased in the past few weeks, employers should consider encouraging or even requiring an employee with COVID-19 symptoms or an employee who does not have symptoms but has been exposed to COVID-19 to take a COVID-19 viral test before returning to work.

Symptomatic Employees with Confirmed or Suspected COVID-19

The Criteria provide that employees who have confirmed or suspected cases of COVID-19 and have reported symptoms may discontinue isolation using the following "symptom-based strategy":

- At least three days (72 hours) have passed since recovery, which is defined as resolution of fever without the use of fever-reducing medications;
- The person has experienced improvement in respiratory symptoms (e.g., cough, shortness of breath); and
- At least 10 days have passed since symptoms first appeared.

Alternatively, the following "test-based strategy" may be used:

- Resolution of fever without the use of fever-reducing medications;
- Improvement in respiratory symptoms (e.g., cough, shortness of breath); and
- Negative results of an FDA Emergency Use Authorized COVID-19 test from at least two consecutive respiratory specimens collected at least 24 hours apart.

Asymptomatic Employees Who Have Tested Positive for COVID-19

Employees who have not had any COVID-19 symptoms but have tested positive for COVID-19 may discontinue isolation if at least 10 days have passed since the date of their first positive COVID-19 diagnostic test, assuming they have not subsequently developed symptoms since their positive test. (The Criteria note that because symptoms cannot be used to gauge where these individuals are in the course of their illness, it is possible that the duration of viral shedding could be longer or shorter than 10 days after a person's first positive test. If employees develop symptoms, then the symptom-based or test-based strategies described above, for symptomatic employees, should be used.)

Alternatively, employees may discontinue isolation if they receive negative results of an FDA Emergency Use Authorized COVID-19 test from at least two consecutive respiratory specimens collected at least 24 hours apart.

Asymptomatic Employees Who Have Been Exposed to COVID-19 But Have Not Tested Positive

The CDC recommends that employees who have been exposed to COVID-19 (but who have not had COVID-19 symptoms or tested positive) should quarantine themselves for 14 days after exposure, based on the time it takes to develop illness if infected. Note that under this standard, it is possible that a person *known* to be infected could leave isolation (under the CDC Criteria described above) earlier than a person who is quarantined because of the *possibility* that he or she has been infected.

Longer Isolation Times for Certain Populations

The Criteria note that for certain populations, extending home isolation for a longer timeframe after recovery may be desired to minimize the chance of prolonged viral shedding. Such persons include:

- Healthcare personnel in close contact with vulnerable persons at high-risk for illness and death if those persons get COVID-19; and
- Persons who have conditions that might weaken their immune system which could prolong viral shedding after recovery.

Fitness for Duty Certifications

As an accompaniment to a test request, employers may also require that an employee provide a fitness for duty certification from a doctor before returning to the workplace. As a practical matter, there may be a delay in an employee's ability to get a doctor's appointment immediately after a stay-at-home order is lifted. According to both EEOC and OSHA recommendations, employers should therefore consider accepting other, less time-intensive certifications, such as an email or form from a local clinic certifying that the employee has tested negative or completed a 14-day quarantine.

CONCLUSION

Bringing employees back to the workplace in the midst of a pandemic may seem daunting as employers remain highly concerned about safety and legal exposure. By relying on governmental resources and directives to develop a clear plan that outlines the steps to take when an employee is either symptomatic, tests positive or has been exposed, employers can significantly mitigate their risks. As always, the Goodwin [Employment team](#) is pleased to help our clients navigate these critical issues.

Visit Goodwin's [Coronavirus Knowledge Center](#), where firm lawyers from across the globe are issuing new guidance and insights to help clients fully understand and assess the ramifications of COVID-19 and navigate the potential effects of the outbreak on their businesses.

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