

# AN EMPLOYEE HAS COVID-19—NOW WHAT? AN EMPLOYER'S QUICK 7-STEP GUIDE

Insights  
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Though many experts thought the summer months would bring reprieve, COVID-19 cases are continuing to rise in the United States and, as a result, more employers are dealing with employees testing positive for the coronavirus. Since we published [our original plan for responding COVID-19 cases](#) when businesses began to reopen in April, updated guidance has provided some additional considerations employers should keep in mind as they address a positive coronavirus case. Here is our quick seven-step guide to addressing a positive COVID-19 case in the workplace:

## STEP ONE: ISOLATE/QUARANTINE INFECTED EMPLOYEE

You should instruct the infected employee to remain at home until released by a physician or public health official. If a doctor's note releasing the employee is unavailable, follow the CDC guidelines on when an employee may [discontinue self-isolation](#), which contain specific requirements dependent upon whether the employee tested positive for COVID-19 and/or exhibited symptoms.

## Step Two: Conduct Contact Tracing to Identify Individuals in [6-15-48](#) of Infected Employee

After learning that one or more employees has been diagnosed with COVID-19, act quickly to have the infected employee identify all other employees and/or third parties who might have been exposed during the infectious period. Ask the infected employee to identify all individuals who fall in the ["6-15-48" zone](#): those who worked in "close

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**Hannah Sweiss**

Partner

[818.230.4255](tel:818.230.4255)

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proximity" (within six feet) for a prolonged period of time (15 minutes or more) with the infected employee during the 48-hour period before the onset of symptoms.

In addition to speaking to the infected employee, consider using apps and technology to help with your contact tracing efforts. Consult your employment lawyer for specific guidance depending on your situation.

### **STEP THREE: ADDRESS THOSE EMPLOYEES WHO WERE IN CLOSE PROXIMITY TO INFECTED EMPLOYEE**

Under CDC guidance, you should notify all non-critical infrastructure workers who worked in close proximity to the infected employee that they may have been exposed and send them home for 14 days to ensure the infection does not spread. While quarantined, you should instruct employees to self-monitor for symptoms, avoid contact with high-risk individuals, and seek medical attention if symptoms develop.

The CDC has developed alternative guidelines for critical infrastructure workers. If you are an essential business, asymptomatic employees who have been directly exposed to a confirmed case of COVID-19 can continue to work if certain guidelines are met.

### **STEP FOUR: RECORDING, REPORTING, AND INVESTIGATING THE WORK-RELATEDNESS OF COVID-19**

OSHA recently unveiled new recordkeeping requirements requiring covered employers to make an increased effort to determine whether they need to record and report confirmed coronavirus cases in the workplace. To ensure compliance, you should document your efforts to determine if the positive COVID-19 case was work-related. In most situations, once you learn of an employee's COVID-19 illness, you should:

1. Ask the infected employee how they believe they contracted the COVID-19 illness;
2. While respecting employee privacy, discuss with the infected employee their work and out-of-work activities that may have led to the COVID-19 illness; and
3. Review the employee's work environment for potential COVID-19 exposure.

Look to the surrounding evidence to aid your efforts. OSHA's guidance highlights that certain types of evidence weigh in favor of or against work-relatedness. For example, when there is no alternative explanation, a case is likely work related:

- When several cases develop among workers who work closely together;
- If it is contracted after lengthy, close exposure to a customer or coworker who has a confirmed case of COVID-19; or
- If an employee's job duties include having frequent, close exposure to the general public in a locality with widespread transmission.

If you make a reasonable and good faith inquiry but cannot determine whether it is more likely than not that exposure in the workplace played a role in the confirmed case of COVID-19, the agency says that you do not need to record the illness.

You should also check local and state guidance to determine if there are other investigation, reporting, or recording obligations triggered by a positive COVID-19 case. For example, the Los Angeles County, California Order mandates that employers with knowledge of three or more positive COVID-19 cases among employees within a 14-day span must report the COVID-19 "outbreak" by telephone to the Department of Public Health.

## **STEP FIVE: CLEAN AND DISINFECT YOUR WORKPLACE**

After a confirmed COVID-19 case, follow the CDC guidelines for cleaning and disinfecting the workplace. The cleaning staff or a third-party sanitation contractor should clean and disinfect all areas (e.g., offices, bathrooms, and common areas) used by the ill person, focusing especially on frequently touched surfaces.

If using cleaners other than household cleaners with more frequency than an employee would use at home, ensure workers are trained on the hazards of the cleaning chemicals used in the workplace and maintain a written program in accordance with OSHA's Hazard Communication standard. Simply download the manufacturer's Safety Data Sheet (SDS) and share with employees as needed, and make

sure the cleaners used are on your list of workplace chemicals used as part of a Hazard Communication Program.

## **STEP SIX: DETERMINE IF OTHER EMPLOYEES AND THIRD PARTIES SHOULD BE NOTIFIED**

Following a confirmed COVID-19 case, and as recommended by the CDC, notify all employees (see sample [Notice of Positive Employee Test](#)) who work in the location or area where the employee works of the situation. Notification should be done without revealing any confidential medical information such as the name of the employee. You may obtain the employee's signed authorization to disclose their diagnosis (see sample [CA Authorization](#) and [Non-CA Authorization](#)). Also notify any third parties that may have been exposed by the infected employee.

Inform employees and third parties of the actions you have taken, including requiring employees who worked closely to the infected worker to go home (if a non-essential business) and your sanitizing and cleaning efforts. Include a reminder about seeking medical attention if they exhibit symptoms. The failure to notify employees at your location of a confirmed case may be a violation of OSHA's general duty clause, which requires all employers to provide employees with a safe work environment.

## **STEP SEVEN: DETERMINE IF THE INFECTED EMPLOYEE (OR OTHERS) ARE ELIGIBLE FOR PAID TIME OFF**

Finally, determine if the employee is eligible for paid time off under company policy, local, state, or federal guidelines. If you are a covered employer under the [Families First Coronavirus Response Act](#) (FFCRA), the infected employee may be eligible for emergency paid sick leave. Other potentially exposed employees may also be eligible for emergency paid sick leave. Make sure you maintain appropriate documentation for employees on leave.

## **CONCLUSION**

This an evolving area, with new guidance being issued constantly. Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips'](#)

[Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of [our Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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*This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*