As the COVID-19 outbreak continues to disrupt normal workplace operations, an increasing number of employers are facing the reality of employees testing positive for the virus – particularly in industries like healthcare, construction, transportation, or retail, where workers cannot necessarily telecommute. Employees may also report to work sick, or become sick at work, and show COVID-19 symptoms. Even though employers may be hoping for the best, it is best to have a plan for the worst. Employers should have clear plans and procedures in place to address confirmed or presumptive COVID-19 cases in the workplace, which will enable employers to take swift, appropriate actions to minimize risk for their employees and operations. The following are guidelines for steps to take in addressing these situations:

A Confirmed or Presumptive COVID-19 Diagnosis in the Workplace

- Send the employee with a confirmed or presumptive case of COVID-19 (the “Affected Employee”) home if they are at work, or have them stay at home if they are not at work.
- Encourage the Affected Employee to contact their healthcare provider immediately.
- There is no requirement for employers to notify either the CDC or any state’s department of health to inform them of the positive diagnosis of an employee. The healthcare provider which receives the confirmation of a positive test result is the mandatory reporter who will handle that responsibility.
- Provide the Affected Employee with information on sick leave and other applicable benefits. This should include benefits both on the federal level, such as the leave available for COVID-19 related absences under the Families First Coronavirus Response Act, and the state level, such as New York’s paid leave for those under an order of quarantine or isolation. Determine what benefits are available for employees in advance, so you have the information ready to provide to an Affected Employee.
- Ensure the Affected Employee has a point of contact with whom they should communicate any updates and developments.
- Clean and disinfect the Affected Employee’s workspace thoroughly as soon as possible.
- Ask the Affected Employee to provide a list of employees or other business-related third parties with whom the Affected Employee came in to “close contact” over the previous 14 days. The CDC defines “close contact” as being within approximately 6 feet of someone with COVID-19 for a prolonged period of time, or having direct contact with infectious secretions from someone with a COVID-19 case (e.g., being coughed on).
- Communicate the potential exposure to other employees who were in close contact with the Affected Employee, without revealing the identity of the Affected Employee. In addition, inform any third parties who were potentially in close contact with the Affected Employee, such as landlords, customers, contractors, and vendors.
- Send home any individuals who came into close contact with the Affected Employee, and advise them to self-quarantine for a 14-day period (unless they are critical infrastructure workers as discussed below).

Special Protocol for Critical Infrastructure Workers: In guidance issued on April 8, 2020, the CDC advised employers that “critical infrastructure” workers may be permitted to work following potential exposure to COVID-19 so long as they display no symptoms and the following precautions are taken:

- Employers should screen the employee for temperature and symptoms before starting work, and before they enter the workspace if possible.
- If the employee does not have a temperature or symptoms, they should be instructed to self-monitor under the supervision of their employer’s occupational health program.
- The employee should wear a face mask at all times for 14 days after potential exposure.
- The employee should practice social distancing as much as their duties permit.
- Employers should clean and disinfect the workspace and all shared areas regularly.

- If you believe the Affected Employee may have contracted the virus at work, review and comply with relevant OSHA recording obligations.
If an employee self-reports potential exposure to COVID-19, treat this as a presumptive COVID-19 exposure. Direct the employee to self-quarantine (unless they are a critical infrastructure employee, in which case follow the steps described previously), and assess any co-workers or third parties they were in potential close contact with. Remember, even in a potential exposure instance, confidentiality rules apply. When communicating potential exposure to other employees or third parties, do not reveal the identity of the potentially exposed employee.

An Employee Comes to Work Sick

- If an employee comes to work sick or becomes sick at work, a trained supervisor or member of Human Resources should ask to speak with the employee in a private space. Designate the person who will handle these interactions ahead of time, and ensure that this individual keeps a safe distance from the employee during the discussion.
- Ask the employee how they are feeling and to describe their symptoms.
- If the employee describes having any of the CDC's listed symptoms of COVID-19 (e.g., cough, fever, difficulty breathing, exhaustion), the employee should be sent home and encouraged to contact their healthcare provider immediately.
- If the employee is sent home with possible COVID-19 symptoms, proceed to follow the steps outlined in the prior section (direct them to self-quarantine, assess if they had close contact with others, advise them of applicable leave benefits, and so forth).

A Teleworking Employee Reports Sickness

- Importantly, if an employer learns of the presumptive or positive diagnosis of an employee when the entire workplace has been teleworking for 14 or more days, other employees and third parties should not be informed.
- In the scenarios we have previously described, the reason for informing other employees and potentially affected third parties is to alert them to their potential for exposure so they can take appropriate steps.
- In a situation where the workforce is teleworking, the employer should still determine if the Affected Employee has come into contact in the past two weeks with co-workers or third parties with whom the employer has business contacts. If not, there is no need to disseminate the information further.
- An employer who communicates such information to the rest of the workforce or third parties, even without the Affected Employee’s name, runs the risk of violating confidentiality laws.

Conclusion

In any of these situations, remember to keep calm and stay in control. These are frightening times for many people, and employees will look to their employers to provide leadership and guidance. Employers should maintain regular communications with their workforce to keep employees apprised of relevant developments, keeping confidentiality in mind. Implementing effective procedures to handle sick employees will go a long way towards reassuring your workforce and keeping employees safe and productive.

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