

An Employee Has COVID-19. Now What Do I Do?

There is a lot of information available on the internet regarding an employer's obligations in preparing for and dealing with the COVID-19 pandemic. As a responsible employer, your organization has likely taken many steps to prepare for some of the work-related fall-out from this pandemic.

Still, if and when the first confirmed case of a COVID-19 infection in one of your employees occurs, it is normal to experience a momentary "panic freeze" about what to do. This information memorandum lays out the basic rules to follow and resources to check.

1. The infected employees should be immediately required to leave the workplace, and/or told not to return to the workplace until they are free of the virus.
2. Employers should contact their local health authorities about the employee's illness and work with them. The health authority will collaborate with the employer on the steps that the employer should take to inform others who may have been exposed to the virus in the workplace.
3. For those employers in leased or shared workplaces, the building management will typically have a protocol to follow regarding notice and cleaning of common areas.
4. There are several laws that govern the disclosure of private health information to others, and there is some tension in those laws. An employer needs to balance its obligation to keep employee health information private under the Americans with Disability Act (ADA) and the ADA's state law equivalents against OSHA standards for workplace safety. Guidance issued by OSHA, the EEOC and the CDC addressing an employer's obligations with respect to this pandemic are listed below.
5. The rule of thumb is that you can (and likely must) disclose that an employee has tested positive with other employees, but you need to ensure that the disclosure does not share too much information. Disclose the minimum amount of personal information necessary to enable co-workers (and others who came in contact with the ill employee in the workplace, such as customers or vendors) to assess their own personal health and potential exposure. This will necessarily be context specific.
6. Be very careful about how many people know the name of the ill individual and that each of them understands their obligation to keep information confidential. Often, inappropriate disclosures happen through "water cooler talk." Be aware that there will be persistent questions from concerned employees and the media about the ill employee and ensure that those questions are fielded by specifically designated individuals who are trained to respond.
7. In most situations, the preferred approach is to not name the individual who has tested positive. This is true even if the name of the ill employee is obvious due to the context of the situation.
8. Communication with the infected employee is critically important for many reasons including to offer support, to fully understand the link to the workplace and to protect other employees and your business. In most situations, you will want to tell the infected employee your plan to communicate with public health authorities and other employees. Sharing with the employee up front what you are disclosing, and why, will demonstrate to the employee at the outset that you are doing what you need to in order to protect the rest of the workforce. Again, the particular circumstances will dictate the extent of those discussions.

9. Using the OSHA guidance listed below, consider what you need to do to protect others in the workplace. Some workers who were in close contact with, or had repeated or prolonged exposure to, the sick person may need to be quarantined as well. The local health authority will help with this determination.
10. According to the OSHA guidance listed below, physical spaces where infected or potentially infected employees worked should be sanitized to reduce any potential that the virus remains on work surfaces.
11. Under OSHA's recordkeeping rules, COVID-19 is a recordable illness when the worker is infected on the job. If there is some evidence that an employee contracted the virus in the workplace, you should speak with legal counsel regarding your OSHA reporting obligations.
12. You should require a written authorization from the employee's healthcare provider before allowing the employee to return to work. You must rely on the healthcare provider, and not the employee, to clear the employee to return to work.
13. When an employee potentially contracts COVID-19 in your workplace, it raises the issue of potential workers' compensation coverage. Although there have been no reported cases on this yet, workers' compensation law generally requires that the employee establish that the illness was contracted in the course and scope of employment and that it was caused by a hazard recognized as peculiar to the work. Other than work done by first responders and those in a healthcare setting, it is not likely that COVID-19 will be treated differently than the flu for workers' compensation purposes, and so will not be covered. We suggest you contact your legal counsel if an employee insists that he or she was infected at work and asserts a workers' compensation claim.

But be aware that this is a developing issue and new state law could pre-empt the way workers' compensation is handled for this pandemic.

Federal resources include:

- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [EEOC's 2009 guidance on Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)
- [CDC's Interim Guidance for Businesses and Employers; Plan, Prepare and Respond to Coronavirus Disease 2019](#)

New York resources include:

- [The New York State Department of Health Novel Coronavirus \(COVID-19\) What You Need to Know](#)
- Your local county department of health website

If you have any questions about this Information Memo, please contact the [attorneys](#) in our [Labor and Employment Law Practice](#), the [attorneys](#) in our [Cybersecurity and Data Privacy Practice](#) or the attorney in the firm with whom you are regularly in contact.



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