

## Significant New Guidance Regarding Public and Private Employees Returning to Work Following a COVID-19 Infection or Exposure

The New York Department of Health has issued new [guidance](#) (the Guidance) regarding when employees may return to work following a COVID-19 infection or exposure. This Guidance differs significantly from the prior guidance regarding when employees may return to work. We break down the Guidance for you below.

### Who does the Guidance apply to?

Both public and private employees of essential and non-essential businesses and government workers. The Guidance does not apply to health care workers.

### What if an employee tests positive for COVID-19?

Under the prior guidance, a non-essential employee could not return to work for 14 days. Now, if an employee tests positive for COVID-19, the employee may return to work upon completing **at least 10 days of isolation from the onset of symptoms or after the first positive test** if the employee is asymptomatic. This applies **regardless** of whether the employee was symptomatic or asymptomatic at the time of the positive test.

### What if an employee comes into close or proximate contact with a person who has COVID-19?

If an employee had close or proximate contact with a person with COVID-19 for a prolonged period of time and the employee then experiences COVID-19 like symptoms the employee may return to work upon completing **at least 10 days of isolation** from the onset of symptoms.

### What is a “prolonged period of time” for close or proximate contact?

According to the Guidance, “prolonged period of time” is defined as being within six feet of an infected individual **for at least 10 minutes**. A person is considered infected for the period of time beginning 48 hours before the illness onset until the infected individual is isolated. Additionally, the local health department should be contacted if the extent of contact between an individual and a person suspected or confirmed to have COVID-19 is unclear.

### What if an employee comes into close or proximate contact with a person who has COVID-19 AND the employee does NOT experience COVID-19 related symptoms?

This is where the Guidance significantly differs from the prior guidance. If an employee has had close or proximate contact with a person with COVID-19 for a prolonged period of time, the employee may return to work upon completing **14 days of self-quarantine**.

**Please note, this creates a different timeline.** If an employee comes into close or proximate contact with a COVID-19 positive individual AND the employee is not experiencing COVID-19 related symptoms, the employee may return to work after 14 days of self-quarantine. If that employee later develops COVID-19 symptoms, that employee **must self-isolate for at least 10 days from the onset of symptoms**. For example, if an employee self-quarantines after coming into close or

proximate contact with a COVID-19 positive individual and develops COVID-19 symptoms on the fifth day, that employee must self-isolate for at least 10 days from the fifth day, until the employee becomes asymptomatic.

**The rules are different if the employee is essential.** If an employer wants to bring back an employee regarded as essential, meaning “critical for the operation or safety of the workplace,” the employee must be asymptomatic. First, the employee’s supervisor and a human resources representative must complete documentation regarding the employee’s essential nature. They must do so in consultation with “appropriate state and local health authorities” regarding the employee. Additionally, the employee must follow the below protocols, which **should be** monitored and documented by the employer and the employee:

1. **Regular monitoring.** The employee must self-monitor and check his or her temperature and COVID-19 symptoms every 12 hours. The temperature may not be 100.0 degrees or higher.
2. **Face mask.** The employee must wear a mask in the workplace at all times for 14 days after exposure.
3. **Social distancing.** The employee must maintain at least six feet of distance from others.
4. **Maintain quarantine.** The employee must continue to self-quarantine and self-monitor for temperature and symptoms **when not at the workplace** for 14 days after last exposure.

As in all circumstances, the employer must continue to regularly clean and disinfect all areas, such as offices, bathrooms, common areas and shared electronic equipment.

#### **What about if an employee shows up to work symptomatic or develops COVID-19 symptoms at work?**

The employee must be separated and sent home immediately and may return to work upon completing at least 10 days of isolation from the onset of symptoms OR upon receipt of a negative COVID-19 test result. Note that in this case, it does not matter if close or proximate contact with an infected individual can be identified.

Remember, if your business is eligible to reopen, you need a plan. The attorneys at Bond, Schoeneck and King can help you develop a reopening plan. Our attorneys have already worked with clients on the development and submission of plans to the state and regional Empire State Development directors. We have also formed a new practice, [COVID-19 Recovery for Business](#) to help clients recover and reopen.

If your industry needs its voice to be heard, now is the time to act. Please contact [Hermes Fernandez](#), [Caitlin Anderson](#) or the attorney at the firm with whom you are regularly in contact.



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