

BY MID-MARCH, many municipalities and states had put forth either mandatory or recommended closures of non-essential facilities, institutions and businesses, but some businesses continue to operate, even if at reduced levels. Workplace interventions, and advising employees to take specific actions—such as to self-quarantine for 14 days—should be consistent with public health guidelines, which have changed and become more detailed as our knowledge of COVID-19 increases. Testing for COVID-19 infection apparently will become available in the U.S. on a widespread basis during the last two weeks of March, making less ambiguous some of the difficult decisions that employers and institutions must make. Public health departments at the local and state level, along with the CDC, are the most important sources of information and guidance for dealing with employees and others (such as workplace visitors and customers) who may have COVID-19 infection. Our clients' experience has been, however, that at the present time, many public health authorities are overwhelmed, and although those authorities are theoretically the first resort for employers seeking direction, employers may need to make quick decisions on their own. Decisions should be consistent with current public health guidance and should try, insofar as possible under exigent circumstances, to respect employees' and others' medical privacy and personal interests. These questions and answers are offered to assist employers who are confronted with various scenarios in which employees and/or customers or clients may have been put at risk.

AN EMPLOYEE IS FEELING ILL AT WORK, AND THE SYMPTOMS ARE HIGH FEVER AND COUGH.

The employee should be sent home immediately and advised to rest and seek medical care if the illness cannot reasonably be treated with over-the-counter remedies. It would be prudent and reasonable for the employer to follow up periodically to see if the employee is improving or has sought medical care.

THE EMPLOYEE WE SENT HOME SEEKS CARE AT AN EMERGENCY ROOM AND IS TESTED FOR COVID-19.

When the employee calls the employer to report this, there is not yet a test result. At this point, there is no evidence that the employee has COVID-19 infection, but there is reason for concern, even if the employee only has one of the circulating strains of influenza. A reasonable approach at this point is to do nothing more than encourage employees who feel ill not to come to work, or to leave work and go home for rest. The employer should follow up with the employee to determine the test result, when available.

THE EMPLOYEE OR HIS FAMILY NOTIFIES THE EMPLOYER THAT THE EMPLOYEE HAS TESTED POSITIVE FOR COVID-19 INFECTION.

The health care provider that performed the test has the affirmative legal obligation to notify the local and/or state department of health of the positive result, along with the name and other identifying information about the employee. At this point, the contact assessment process used by the department of health should be triggered, and the employer may be approached by a public health worker who will assist in contact assessment. The public health worker may do this directly, by interviewing co-workers by telephone or in person to assess their possible exposure and risk, or the public health worker may ask the employer to assist in this effort by identifying those who

have been in close, sustained contact with the ill employee over the past two or three weeks. Unfortunately, if the local or state public health department is overwhelmed, those resources may not be available, and the employer may need to make its own assessment of risks presented to others by the situation. If available, a physician who is aware of current information about COVID-19 should be enlisted to assist the employer in a contact assessment process. Persons identified in the process as being at some appreciable risk should be counseled to go home, rest and take care of themselves, separate themselves insofar as possible from their own families (using separate bedroom and bathroom, if possible, and avoiding close contact until 14 days have passed), and seek medical help if they begin to feel ill. Again, it would be prudent for the employer to stay in touch with the employee and his/her family, offering any assistance and inquiring about the occurrence of any developing flu-like illness.

HOW DO WE DO A CONTACT ASSESSMENT FOR A PERSON—EMPLOYEE OR OTHER—WHO WAS IN OUR WORKPLACE WHO HAS TESTED POSITIVE FOR COVID-19?

Persons who passed the employee or visitor in the hallway are not deemed to be at risk. Risk is determined instead by close proximity (6 feet) to the infected person over some sustained period of time; typically 15 minutes or more is used as a guideline. The closer, more sustained and more enclosed the encounter with any infected person, the more likely that transmission may have occurred. In identified cases at some significant risk for infection, those contacts should be sent home to rest and return in 14 days, assuming no illness has developed in that time.

WHAT ABOUT “CONTACTS OF CONTACTS”? ARE THEY AT RISK?

What should the employer do about them? If, using the process above, the employer identifies one or more people at risk in the workplace, then those persons’ own contacts do not, as a public health measure, need to be assessed and advised until or unless such persons who are primary contacts of the positive case develop illness themselves and have tested positive for COVID-19. “Contacts of contacts” or “contacts of contacts of contacts” should not be treated, at the present time, as though they may be infected with COVID-19.

A PERSON AT ANOTHER FIRM ON OUR SAME OFFICE FLOOR (BUT IN A DIFFERENT OFFICE SUITE) IS REPORTED TO HAVE TESTED POSITIVE FOR COVID-19.

What should be done to protect our employees? Unless employees of your firm have somehow been in close, sustained proximity to the infected employee of the other firm, no intervention is needed, other than to re-emphasize that anyone who feels ill should not come to work, or if at work already, should go home, and follow the process described above.

DISCLAIMER

The content of this document is for illustrative purposes only and not intended as provision of legal advice. If you have any specific questions about COVID-19 and your workplace, please contact your Ropes & Gray attorney, [Mark Barnes](#) or [Doug Brayley](#).

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