

Returning Employees to work What if an Employee Tests Positive for COVID-19?

As businesses begin to reopen, there are many questions and concerns about how to do that safely. Here are some best practice guidelines to manage both the needs of your employees and your business.

What should you do if an employee shows up at work with COVID-19 symptoms?

- Immediately send the employee home.
- Employers need to be careful to protect the confidential medical information pertaining to employees. The employer should not disclose the identity of an employee who tested positive for COVID-19 or has COVID-19 symptoms to other employees, unless the infected employee freely consents to the release of that information.

What should an employee do if they have symptoms of COVID-19?

Stay home from work or go home from work and contact their healthcare provider. Remember, it's up to the healthcare provider to diagnose, recommend testing, and to treat the employee. If the employee is diagnosed with COVID-19 or tests positive for COVID-19, the employee should inform their employer.

What to do if an employee tests positive:

If an employee tests positive for COVID-19, you should immediately separate them from other employees and send them home (or, if they are already out of work, instruct them to remain home). The employee should not return to work until released by their medical provider and they should self-isolate as instructed by the CDC. The U.S. Equal Employment Opportunity Commission ("EEOC") has confirmed infected employees, including those experiencing symptoms, may be sent home.

Identify & Send Home Employees Who Were in Close Proximity with the Infected Employee

After removing the infected employee, you should immediately begin trying to determine who was in close proximity (within six feet) of the infected employee for a prolonged period of time (10 minutes or longer) during the 48 hours before the onset of the symptoms.

The CDC provides that employees who worked closely with the infected worker should be instructed to proceed based on the CDC's guidance. This includes staying home until 14 days after last exposure, maintaining social distance from others, and self-monitoring for symptoms (i.e., fever, cough, or shortness of breath). If you are an essential worker, however, see the section below discussing the CDC's guidance.

There is no guidance requiring that other employees who were in proximity to the infected employee self-quarantine or get tested. These employees remain subject to the general guidance in the work place, which is that if they begin exhibiting COVID-19 symptoms they should remain at home and contact their healthcare provider.

At all times, as an employer, you should be enabling and enforcing social distancing and other preventative measures in the work place. Specific guidance for various industries and businesses can be found on the OSHA website.

When can an employee who has tested positive for COVID-19 or been diagnosed as having COVID-19 return to work?

If an employee has not had a test to determine if he or she is still contagious, they can return to work after these three things have happened:

- no fever for at least 72 hours (that is three full days of no fever without the use of medicine that reduces fevers);
- other symptoms have improved (for example, cough or shortness of breath have improved); and
- at least 10 days have passed since symptoms first appeared.

If an employee has had a test to determine if he or she is still contagious, they can return to work after these three things have happened:

- no fever (without the use of medicine that reduces fevers);
- other symptoms have improved (for example, cough or shortness of breath have improved); and
- the employee has received two negative tests in a row, at least 24 hours apart.

Can I, as an employer, require that its employees get tested for COVID-19?

The EEOC does not require employers to test employees for COVID-19. However, its guidance does allow for employers to require testing where “testing is job-related and consistent with business necessity.” The EEOC advises that testing is justified where there is a threat to the safety of employees, and that COVID-19 does constitute such a threat.

Testing includes screening employees for COVID-19 symptoms such as fever, chills, cough, shortness of breath, or sore throat, taking the temperature of employees, or conducting swabbing tests for detection of the virus.

The results of such inquiries should be kept confidential, like any other medical information regarding an employee.

Notify Employees of Positive COVID-19 Test Result

If an employee tests positive for COVID-19 during the pandemic, employers should inform employees that an employee has tested positive for COVID-19 but do NOT reveal the identity of the employee who tested positive except on a need to know basis. You can and should notify affected employees in a way that does not reveal the personal health-related information of the infected employee. For example, you could speak with employees or send an email or other written communication stating:

[Employer] has learned that an employee at [office location] tested positive for the COVID-19 virus. The employee received positive results of this test on [date]. This email is to notify you that you have potentially been exposed to COVID-19 and you should contact your local public health department for guidance and any possible actions to take based on individual circumstances.

Other than communicating the positive test result, an employer may not, discuss the infected employee's health status with other employees. The employer must maintain strict confidentiality of the infected employee's name and health condition.

Maintain a Clean, Safe & Healthy Workplace

As an employer, you are required to take all reasonable precautions necessary to comply with all safety and health regulations, including as required by the Occupational Safety and Health Administration ("OSHA") and its Guidance on Preparing Workplaces for COVID-19. This may include closing a location known to have been infected, if necessary, for proper cleaning and disinfecting. The CDC recommends waiting up to 24 hours before beginning cleaning and disinfection.

Essential Workers: The CDC has issued relaxed guidelines for critical infrastructure workers, as previously defined by the Cybersecurity and Infrastructure Security Agency, who have been potentially exposed to COVID-19. Under the relaxed guidelines, essential workers potentially exposed to COVID-19 may continue to work following exposure provided they remain symptom-free and employers implement precautions to protect the employee and the community (e.g., pre-screen, regular monitoring, wearing a mask, social distancing, and routinely disinfecting and cleaning work spaces).