

What to do when on onsite employee tests positive for COVID-19

By Dan Eaton

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On July 6, The New York Times cited a new survey that found most Americans believe their lives are “at least approaching pre-pandemic normalcy.”

And yet, the front-page headline of the July 8 Union-Tribune read “COVID-19-related hospitalizations increasing.”

Now’s the time for a refresher on what an employer must do when an employee at its workplace tests positive for COVID-19. Cal-OSHA’s current Emergency Temporary Standards (ETS) are in effect through Dec. 31. The ETS is explained by the agency’s answers to Frequently Asked Questions. The agency’s FAQ guidance is updated regularly, especially to reflect changes in directives from the California Department of Public Health (CDPH).



(San Diego Union-Tribune)

Six actions

1. Determine when the infected person was last at work. Ask when the individual tested positive or first experienced COVID-19 symptoms.
2. Identify employees who may have had “close contact” with the infected person.

The CDPH updated the definition of “close contact” in June to mean anyone sharing the same indoor space with an infected person “for a cumulative total of 15 minutes or more over a 24-hour period ... during an infected person’s ... infectious period.”

The CDPH defines “infectious period” for a symptomatic person to mean the period from two days before the infected person started experiencing symptoms through ten days after the onset of symptoms (“or through Days 5-10 if testing negative on Day 5 or later”) coupled with the infected person’s symptoms subsiding, including the passage of 24 hours with no fever without the use of fever-reducing medication.

According to Cal-OSHA’s FAQ, where action may or must be taken on a particular day, such as Day 5, “day 1 is the first day following the onset of symptoms or, if no symptoms develop, the day following the first positive test.”

For asymptomatic individuals, the infectious period starts two days before the positive specimen was collected, or through days 5-10 of the infected person testing negative after the positive specimen for COVID-19 was collected.

3. Notify in writing within one business day all employees and independent contractors who were in the workplace with the infected person, during that individual’s infectious period, of their potential exposure to COVID-19. Remember the notification may not identify the infected person.

4. Make COVID-19 testing available, offsite or onsite, to “potentially exposed employees with a close contact at no cost and during working hours. . . .” An employer need not make testing available to asymptomatic employees who recently returned to work after recovering from COVID-19.
5. Exclude the infected person from the workplace until their infectious period has passed. Exclude those who had close contact with an infected person until the infected person is no longer considered to be within the infectious period. According to the CDPH, “infected persons who test negative on or after Day 5 and end isolation are no longer considered to be within their infectious period.”
6. Investigate whether workplace conditions may have contributed to the risk of exposure and what corrections would have reduced exposure.

Excluded employees may be entitled to continued pay and benefits

An employee excluded from the workplace due to COVID-19 may be entitled to continued exclusion pay and benefits from the employer under the ETS. An employer need not maintain the excluded employee’s earning and benefits under the ETS if the employee is unable to work for “reasons other than exposure to COVID-19 at work (e.g., a non-work exposure, business closure, caring for a family member, disability, or vacation.)” The employer has the burden of proving an exposure to COVID-19 was not work-related, generally with evidence gathered through the employer’s investigation.

According to Cal-OSHA’s FAQ, employees ineligible for ETS-mandated exclusion pay “may be eligible for other leave, including sick leave, or other benefits such as Disability Insurance, Paid Family Leave, or Unemployment Insurance Benefits.”

Attention must be paid to Cal-OSHA’s regularly updated and evolving COVID-19 rules and guidance. One day, these unique mandates will end. But that day will not be this year.

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