



## **Checklist for Employers when employee tests positive for COVID-19**

Source: Jennifer Ingram of Haynes and Boone LLP 3/18/20

Employers should consider the following checklist when handling an employee testing positive for COVID-19:

- Treat positive test results and “suspected but unconfirmed” cases of COVID-19 the same.
- If the source of infection is known, identify if it was at the workplace or outside.
  - If the infection was contracted inside the workplace:
    - Notify workers’ compensation carrier;
    - Place the employee on workers’ compensation leave (with pay); and
    - Record the infection in the employer’s OSHA 300 log.
  - If the infection was contracted outside the workplace:
    - Is employee eligible for FMLA?
      - If yes, place on FMLA leave. (Note that an amendment to the FMLA that would cover COVID-19 is pending and will likely pass soon.) If no, place on other leave.
    - Does employee have accrued sick or vacation time available?
      - If yes, then let the employee know that the employee may use such leave. However, note that some states (like California) may not allow an employer to require an employee to use paid sick leave for COVID-19.
      - Please note that a Paid Sick Leave law that would address COVID-19 is currently pending and will likely pass. In its current form, covered employers will have to provide this paid sick leave prior to other forms of available leave.
    - If the employer offers short term disability, determine if and when employee is eligible.
- Ask employee if he or she grants the employer permission to disclose the fact that the employee is infected.
  - If yes:

- Notify employee's manager(s) or supervisor(s) that employee is infected with COVID-19 and is out on leave.
    - For everyone else, respond to inquiries by disclosing employee is on a leave of absence for non-disciplinary purposes.
  - If no:
    - Notify employee's manager(s) or supervisor(s) only that employee is on a leave of absence for non-disciplinary purposes.
  - Regardless of yes or no:
    - Disclose identity of employee to any required notification to OSHA or the health department.
- Notify employee's co-workers who may have come into contact with employee at work within the past 14 days that they may have been exposed to COVID-19 and may wish to see a healthcare provider.
  - Not required to notify other office locations unless the employee visited those sites within past 14 days.
  - DO NOT identify the infected employee by name.
  - To the extent reasonably possible, avoid making any direct or indirect references that would lead the co-workers to guess the identity of the employee.
  - For employees who had close contact with employee in past 14 days, send them home for a 14-day self-quarantine.
- Notify known customers, vendors, or third parties with whom the employee may have come into contact at work (including off-site work contacts and building management if office setting) within the past 14 days that they may have been exposed to COVID-19 and may wish to see a healthcare provider.
  - DO NOT identify the infected employee by name.
  - To the extent reasonably possible, avoid making any direct or indirect references that would lead the person to guess the identity of the employee.
  - There is no guidance on how far a company should investigate for third parties who may have come into contact with an employee through work. It is safe to include any parties on the employee's work calendar, in visitor logs, or otherwise readily available or known.
- Arrange for a professional cleaning of the employee's workspace, immediate surrounding area, and areas likely visited (break room, restroom, etc.).
- Respond to inquiries by CDC or public health authorities as/if received.
  - In this instance, the employer is allowed to disclose identity of employee and protected health information.