

U.S. COVID-19: NEW CDC GUIDANCE ALLOWS POTENTIALLY-EXPOSED “CRITICAL INFRASTRUCTURE WORKERS” TO REMAIN AT WORK – WITH PRECAUTIONS

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The Centers for Disease Control and Prevention (“CDC”) recently issued guidance applicable to “critical infrastructure workers,” and safety precautions employers should take when those workers are potentially exposed to COVID-19.

The CDC has generally recommended that any individual who has recently been in close contact with a person with COVID-19 (someone in their household or family member) should “self-quarantine” at home for at least 14 days, self-monitor for symptoms consistent with COVID-19, and check his or her temperature twice a day. Some employers have been applying this guidance to their employees, instructing any employee with a potential exposure to self-quarantine at home for 14 days.

Recognizing that certain essential businesses and functions need to continue operating even during the pandemic, the CDC has now updated its guidance for “critical infrastructure workers,” as defined by the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (“CISA”). Personnel (including contracted vendors) in 16 different sectors of work are considered “critical,” including:

- Federal, state, & local law enforcement;
- 911 call center employees;
- Janitorial staff and other custodial staff; and
- Other designated workers in the following sectors: chemical, commercial facilities, communications, critical manufacturing, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, materials and waste, transportation systems, and water and wastewater.

Under the new guidance, critical infrastructure workers may be permitted to continue working following a potential exposure to COVID-19. A potential exposure means being in a household or having close contact (within 6 feet) with an individual with confirmed or suspected COVID-19, while the individual is symptomatic or within 48 hours before symptoms appeared.

If your employees are “critical infrastructure workers” and are still reporting to work at their usual office or workplace, you may require an employee with a potential exposure to COVID-19 to continue reporting to work as long as the employee remains asymptomatic. The CDC recommends that any employee who has had a potential exposure but remains asymptomatic should self-monitor his/her symptoms, and further recommends that employers implement the following practices:

- Perform a temperature screening before an employee enters an office or workplace and assess employees’ symptoms prior to them starting work (For more information regarding temperature screening protocols, see BCLP’s blog posts on the subject [here](#) and [here](#));
- Require asymptomatic employees to self-monitor and report symptoms under the supervision of an employer’s occupational health program;
- Require employees to wear a mask/face covering in the workplace for 14 days after potential exposure to COVID-19 (employer-issued or employee-supplied);
- Encourage employees to maintain social distancing (six feet apart), as work duties permit; and
- Clean and disinfect work spaces and common areas, including bathrooms and break rooms.

If the employee with potential exposure displays symptoms of COVID-19, the employee should be sent home immediately. Surfaces in their workspace should be cleaned and disinfected. Information on persons who had contact with the sick employee during the time the employee had symptoms and 2 days prior to symptoms should be compiled. Others at the facility with close contact within 6 feet of the employee during this time would be considered exposed.

CDC guidance is not binding. Therefore, employers should comply with applicable state and/or local “shelter in place” (or similar) orders, even if those orders do not mirror the CDC’s recommendations. For example, Washington has issued guidance substantially similar to the CDC guidance, but with important additional recommendations, such as keeping workers on the same shifts to limit the number of different people with whom they interact, and conducting safety and other meetings by telephone or video conferencing rather than in person.

By contrast, Minnesota has issued its own guidance recommending that even critical infrastructure workers with a potential exposure should be sent home and subject to self-quarantine for 14 days, unless an employer has “determined that excluding COVID-19-exposed workers from the workplace would represent a crisis for the continuity of critical operations.” State and local public health authorities are changing their own guidance regularly, which is why it is critical to review such

orders and guidance if you plan to allow “potentially exposed,” asymptomatic employees to continue reporting to work.

The COVID-19 pandemic and its impact on the workplace is rapidly evolving. Employers should regularly consult with legal counsel, the CDC website, and state and local health departments to ensure that they have the most up-to-date information and guidance.

MEET THE TEAM



Patrick DePoy

Chicago

patrick.depoy@bclplaw.com

[+1 312 602 5040](tel:+13126025040)

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