

NYS EMPLOYERS MUST REVISE THEIR SAFETY PLANS

Hodgson Russ Labor & Employment Alert
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As the COVID-19 pandemic continues to evolve, so do the requirements that businesses must meet to reopen and remain open. Employers that were permitted to reopen in Phases One and Two, and those that were permitted to remain open as “essential businesses,” likely drafted and implemented safety plans consistent with then-applicable guidance from New York State. Those safety plans are required to contain specific requirements for what to do when an employee tests positive for COVID-19, has symptoms consistent with COVID-19, or is exposed to a COVID-19 positive individual. New York State recently modified these requirements, so employers need to update their safety plans and practices accordingly.

The guidance published last week for Phase Three, and the revised guidance for Phases One and Two, now refers employers to the New York State Department of Health (“NY DOH”) for “protocols and policies for employees seeking to return to work after a suspected or confirmed case of COVID-19 or after the employee had close or proximate contact with a person with COVID-19.” The NY DOH guidance can be found here. According to this recent NY DOH guidance:

1. If an employee tests positive for COVID-19, regardless of whether the employee is symptomatic or asymptomatic, the employee may return to work after:
 - Completing at least 10 days of isolation from the onset of symptoms, **OR**
 - Completing at least 10 days of isolation after the first positive test if they remain asymptomatic.
2. If an employee has had close or proximate contact with a person with COVID-19 for a prolonged period of time **AND** is experiencing COVID-19 related symptoms, the employee may return to work after completing at least 10 days of isolation from the onset of symptoms.
 - “Close contact” is defined as being “within 6 feet of an infected person for at least 10 minutes starting from 48 hours before illness onset until the time the person was isolated.”
3. If an employee has had close or proximate contact with a person with COVID-19 for a prolonged period of time **AND** is not experiencing COVID-19 related symptoms, the employee may return to work upon completing 14 days of self-

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quarantine.

- If an employee is deemed essential and critical for the operation or safety of the business, as determined by the employee's supervisor and a human resources representative in consultation with appropriate state and local health authorities, the exposed, asymptomatic employee may return to work if the employee complies with the following practices:
 - Regular monitoring: The employee must self-monitor for a temperature greater than or equal to 100.0 degrees Fahrenheit every 12 hours and symptoms consistent with COVID-19 under the supervision of their employer's occupational health program.
 - Wear a mask: The employee must wear a face mask at all times while in the workplace for 14 days after the last exposure.
 - Social distance: The employee must comply with social distancing practices, including maintaining, at least, six feet of distance from others in the workplace.
 - Clean and disinfect workspaces: The employer must continue to regularly clean and disinfect all areas, such as offices, bathrooms, common areas, and shared electronic equipment.
 - Maintain quarantine: The employee must continue to self-quarantine and self-monitor for temperature and symptoms when not at the workplace for 14 days after the last exposure.

Compliance should be monitored and documented by the employer and employee.

4. If an employee is symptomatic upon arrival at work or becomes sick with COVID-19 symptoms while at work, the employee must be separated and sent home immediately and may return to work after completing at least 10 days of isolation from the onset of symptoms **OR** upon receipt of a negative COVID-19 test result.

Importantly, this guidance does not apply to health care or nursing home professionals. The NY DOH has issues separate protocols and guidance for health care and nursing home professionals to return to work.

If you have already developed, or are in the process of developing, a safety plan according to guidance previously issued, please review and revise your safety plan to ensure compliance with the updated NY DOH protocols outlined above. The revised plans should be communicated to employees, supervisors, and any third parties required to abide by the safety plan.

Please contact Lura Bechtel (416.595.2693), John Godwin (716.848.1357), or Luisa Bostick (716.848.1705) if you would like assistance or have questions about the impact of the revised NY Forward and NY DOH guidance on your reopening plan. Our prior alert about the NYForward safety template guidance can be found here: <https://www.hodgsonruss.com/newsroom-publications-11830.html>

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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