FAQ FOR CA EMPLOYERS ON COVID-19 AND RETURNING EMPLOYEES TO WORK

1. What are the main symptoms of COVID-19?

- Cough
- Shortness of breath or difficulty breathing
- Fever
- Chills
- Muscle pain
- Sore throat
- New loss of taste or smell

Other less common symptoms have been reported, including gastrointestinal symptoms like nausea, vomiting, or diarrhea. Symptoms may appear 2-14 days after exposure to the virus.

2. Can employees who exhibit any of the above symptoms be allowed to come to work?

No. Employees who experience any of these symptoms, or otherwise feel like they have the flu, should immediately inform their supervisor, and should stay at home.

While having any of the above symptoms does not necessarily mean that the employee has COVID-19, at this point, and because of the risk of community spread, it is recommended that employees be sent home to self-quarantine and to monitor their symptoms under the guidance of their healthcare professional.

Employees should contact their healthcare provider for further guidance, and especially so if any of the following warning signs for COVID-19 (per CDC) are present:

- Trouble breathing
- Persistent pain or pressure in the chest
- New confusion
- Blu-ish lips or face

Before allowing the employee to return to the workplace, it is recommended that the CDC’s symptom-based strategy timeline be used: (see No. 4).

3. What if an employee is already at work and then begins to experience symptoms?

Employees should inform their supervisor immediately. Any employee or visitor showing symptoms of COVID-19 will be asked to leave the workplace and should return home to self-quarantine.

4. When can an employee return to work after experiencing symptoms of COVID-19?

The following are the CDC guidelines for people who have actually tested positive for the
disease. While there is no specific guidance for those who have symptoms (only), we recommend following the same guidelines until further guidance is provided:

Per CDC guidelines (symptom-based strategy), employees should not be allowed to return to work until:

- The employee has had no fever for at least 72 hours (that is three full days of no fever without the use of medicine that reduces fevers) **AND**
- Other symptoms have improved (for example, when cough or shortness of breath have improved) **AND**
- At least 10 days have passed since the symptoms first appeared

5. **Can the company screen employees at work for COVID-19, for instance by taking temperature checks or asking if they have any symptoms?**

Yes. The company is allowed to conduct temperature checks of employees entering the workplace as a means of evaluating and preventing against possible COVID-19 exposure. The CDC recognizes a temperature **equal to or above 100.4°F as a fever.**

The Company can also ask employees if they are experiencing any COVID-19 symptoms. Any information collected regarding employees’ symptoms or temperatures must be treated as confidential medical information and maintained separately from the employee’s personnel file.

6. **How should temperature checks be performed?**

We recommend using a non-contact thermometer (to maximize social distancing) and designating one person to take the checks prior to any employees being allowed access to the workplace. Preferably, the temperature taker should have some training in taking temperatures.

Per medical privacy laws, you will be required to keep this information confidential and stored in a separate file from the employee’s “regular” employment file. It is therefore preferable not to record any employee specific information and handle temperature checks on a pass/fail basis.

If an employee’s temperature is over 100.4, the employee should be told to return home, and you can simply record that “an employee” failed the test. You will, however, need to follow up with any employee sent home; and they should not return to the workplace until cleared by a healthcare professional or being symptom-free for several days.

Screening questions and temperature checks should be applied uniformly to all employees in order to avoid any potential discrimination claims.

7. **If an employee exhibits symptoms of COVID-19 at work, do I need to record or report the incident to Cal/OSHA?**

It depends. You may need to record the injury on the Form 300 if the illness is determined to be “work-related.” Additionally, you may be required to report the COVID-19 exposure to Cal/OSHA, depending on whether the exposure occurred at work and qualified as a “serious” injury.
*Note that while Cal/OSHA generally will follow Federal OSHA guidance for recording purposes, this is not the case when it comes to reporting. If you have any questions please contact counsel.

8. If an employee tests positive for COVID-19, are they required to report it to the Company?

Technically, employees are not required to self-report. However, the Company is allowed to ask employees whether they have tested positive for, or have been diagnosed with, COVID-19, in order to take appropriate precautions. Additionally, if an employee does not inform the Company after testing positive, the Company will not be able to assess whether the exposure needs to be reported to OSHA.

For these reasons, we recommend that you inform employees that for purposes of workplace safety, they should immediately inform their supervisor or Human Resources if they test positive for COVID-19.

9. Can I require an employee to provide a “fitness for duty” doctor’s note before allowing them to return after self-isolating for COVID-19?

Yes. You may ask for a doctor’s note certifying the employee is fit to return to work. However, the EEOC has advised that due to hospital demands, such a note may not always be readily obtained. Consult counsel before refusing to allow an employee to return who claims to have never had symptoms.

10. An employee has informed me he tested positive for COVID-19. What do I need to do?

The identity of the infected employee must be protected, and should only be shared with management in order to identify other employees who may have been exposed due to close contact with the infected employee. Obtain information from the infected employee regarding what employees he or she worked closely with (i.e., within six feet) for over a 15-minute period of time during the 48-hour period before the onset of symptoms. All employees who are identified per the above should be sent home to self-isolate for 14 days after their last exposure. Follow additional CDC precautions associated with community-related exposure.

11. What other precautions should I take after being informed that an employee tested positive?

Follow the CDC recommendations to clean and disinfect any areas the employee may have frequented. https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html#Cleaning

Recommendations include:

- Close off areas visited by the ill persons. Open outside doors and windows and use ventilating fans to increase air circulation in the area. Wait 24 hours or as long as practical before beginning cleaning and disinfecting.
- Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment (like tablets, touch screens, keyboards, remote controls, and ATM machines) used by the ill persons, focusing especially on frequently touched surfaces.
- Clean surfaces with soap and water, and use EPA-approved disinfectants.

12. If an employee has returned after traveling to a COVID-19 “hotspot,” should they be sent home?
Yes. Due to the widespread transmission of the virus, the CDC recommends that anyone who has traveled internationally, regardless of region, should stay home for 14 days after returning home.

13. What can I do to prepare the workplace for the return of employees?

You should implement any or all of the following, with the recommended emphasis being on social distancing and frequent hand-washing.

- Encourage employees to follow proper hygiene:
  - Frequently wash hands with soap and hot water for at least 20 seconds.
  - Assign a supervisor to ensure soap is available in the washrooms. If not, be sure to immediately notify maintenance personnel to restock.
  - When soap and running water are unavailable, use an alcohol-based hand rub with at least 60% alcohol.
    - Identify touchless dispenser locations (i.e., entrance, lobby, kitchen).
  - Avoid touching eyes, nose, or mouth, especially with unwashed hands.
  - Follow appropriate cough etiquette, which includes covering your mouth when you cough or sneeze, or coughing into your elbow.

- Employees must avoid physical contact with others and practice social distancing (at least six feet of separation) whenever possible.
  - Signs will be put up at various points throughout the office to remind and encourage social distancing.
  - Unless in-person meetings are mandatory for business operations, meetings shall be conducted via telephone or in a large conference room where social distancing can be maintained.

- Employees will be encouraged to stagger breaks and lunches, if practicable, to reduce the size of any group at any one time to less than ten people.
  - Employees using the office break room should be respectful of others and space out as appropriate to maintain social distancing (approximately every other table).

- Employees should not share equipment with each other, unless absolutely necessary. This includes pens, paper, laptops, cell phones, utensils, cups, etc.
  - Employees are encouraged to bring their own water bottles and cups, instead of using a common water source.

- Routine cleaning and disinfecting of shared workplace equipment and furniture will be performed at least daily. (Assign specific personnel.)

- See CDC website for list of EPA-approved disinfectants and PPE required when cleaning.
14. **Do I need to update my company’s Injury and Illness Prevention Plans (IIPPs)?**

Yes, Cal/OSHA has issued guidance that IIPPs be updated to address COVID-19 in industries such as grocery, childcare, agriculture, dine-in restaurants, shopping malls, office environment, and construction.

However, even if you are not in one of these industries, based on our individual experience with Cal/OSHA, it is recommended that all companies, regardless of industries, use this time to evaluate and update their IIPPs.

15. **Do I need to formally train my employees before they return to the workplace?**

Yes. Training is the central part of any successful workplace safety plan. It is also one of the first items that will be reviewed during any complaint or accident inspection by OSHA.

Be sure to keep training records for at least one year (required) and up to three years (recommended). Records must show the date, name of instructor, topic, and person receiving instruction.

Topics on COVID-19 should include the following:

- General information about COVID-19 (definition, transmission modes, symptoms, etc., per CDC guidelines).
- What actions employees should take when they develop symptoms or test positive for COVID-19.
- Best practices to avoid the spread of COVID-19, including but not limited to:
  - Cough and sneeze etiquette
  - Hand hygiene / proper method of washing hands
  - Keeping washing facilities stocked with an adequate supply of hand soap
  - Social distancing as a method to minimize risk of exposure, with the use of masks and/or face cloth coverings as an additional precaution
  - Avoiding close contact with sick persons
  - Avoiding touching eyes, nose, and mouth with unwashed hands
  - Avoiding sharing personal items with co-workers (i.e. phones, laptops, notepads, pens, pencils, etc.)
  - Providing tissues, no-touch disposal, lined trash cans and hand sanitizer for use by employees

16. **What if despite the above precautions and training, an employee still refuses to come to work due to fear of COVID-19?**

Fear, alone, is not a valid reason to come to work. The Company should review the steps it has taken with the employee, and assure the employee it is abiding by CDC, OSHA, and other health and safety laws.

If the employee still does not feel comfortable returning to work, the employee should be encouraged to share his or her concerns with his or her supervisor. Management will need to evaluate the concerns in light of the precautions already put in place, and determine whether any additional precautions are warranted.
Ultimately, if the employee still refuses to return to work, you should consult with legal counsel, who can more fully assess the situation and discuss whether termination is recommended. The preferred option will likely be to allow the employee to take an unpaid leave (without unemployment compensation).

17. What if an employee wants to wear a face mask to work?

While not required by the CDC, masks can possibly reduce the transmission of COVID-19 by individuals who are infected. This is especially so when social distancing is not able to be maintained at the workplace.

Therefore, it is our recommendation that employees be allowed to wear face masks, unless you determine that the face mask itself presents a hazard to the safety of the worker or co-workers. For example, if an employee needs to communicate clearly to others at work, the use of the face mask should be evaluated to ensure that the employee can still clearly and effectively communicate.

It should be stressed to employees that face masks are not a substitute for the primary defenses against COVID-19 spread, which are social distancing, good cough/sneeze hygiene, and frequent hand-washing and use of sanitizers.

18. What if an employee wants to wear a respirator, such as an N95 to work?

A respirator is different than a face mask (discussed above) in that it contains a filtering medium (such as charcoal) to filter airborne particulates. One of the most common respirators is the N95 respirator, which is commonly used among medical personnel. Unlike face masks, most respirators are tight-fitting, and are only effective when a tight seal forms along the area where the respirator and skin make contact.

While respirators reduce the exposure to airborne transmissible diseases, it is not a substitute for effective administrative and engineering controls to reduce and/or eliminate the hazard. The CDC states that N95 respirators are recommended only for use by healthcare personnel who need protection from both airborne and fluid hazards (e.g., splashes, sprays).

However, if an employee still wishes to voluntarily use a respirator, that employee may do so, but only under the following conditions:

- The employee must sign a statement confirming the use is voluntary, and that they will abide by all manufacturer instructions.
- The employee’s supervisor will need to evaluate whether or not the respirator itself will create a hazard to the employee.
  - For instance, if the employee performs physical labor, the N95 may make performing those tasks more difficult.
  - If there is any question surrounding the health of the employee wearing the respirator, the employee should be evaluated by medical personnel.
- The employee will need to be provided with a copy of Title 8, Cal. Code Regulations, Section 5144, Appendix D, (Mandatory) Information for Employees Using Respirators When Not Required Under the Standard
- We also recommend that the Company have the employee sign an agreement that only N95 respirators will be allowed for voluntary use.
If you allow employees to voluntarily use respirators besides the N95, Cal/OSHA requires that the Company establish and implement a written respiratory protection program. Please contact legal counsel for these requirements.

19. Can I discourage the use of gloves in the workplace, if employees want to wear them for protection from COVID-19?

Yes. The CDC recommends wearing gloves when someone is cleaning or caring for someone who is at risk. Otherwise, wearing gloves is not necessary, and instead preventative measures such as social distancing and frequent washing of hands / use of hand sanitizers should be encouraged.

We recommend pointing out to the employee that a glove will not provide any additional protection from the virus. Meaning, the glove will not kill or help prevent picking up the virus when touching contaminated objects.

In fact, people wearing gloves might be less inclined to wash their hands, with the thought that the glove alone is a form of protection. Medical personnel that are treating COVID-19 are required to wear gloves, but that is because the patient is known or highly suspected to have the virus and the gloves are changed and disposed of after each treatment. Hands should be thoroughly washed both before and after wearing the gloves.

20. What if my employee insists on wearing gloves in the workplace when they are not otherwise necessary to perform the job (i.e., only for fear of COVID-19)?

Hand protection is only required to be worn if it protects the employee from being exposed to a hazard. Normally, this is to protect against splashing of a chemical irritant on the skin, or from cuts when working around sharp objects.

But in the COVID-19 context, a glove alone does not provide any protection from the virus. While it is an additional layer over your skin, it otherwise is just as likely to pick up a virus, and the virus does not absorb through the skin.

Therefore, emphasis should be placed on handwashing, and to keep social distancing, and not on wearing gloves.

Furthermore, under your company’s IIPP, you must evaluate for hazardous conditions. If the use of gloves makes an employee’s work more hazardous – such as the glove possibly becoming entangled in machinery, or if the employee can lose grip or slip on equipment – then you should discuss these hazards with the employee, and prohibit the use of gloves as a safety hazard.

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