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## GENERAL GUIDELINES FOR RESPONDING TO AN EMPLOYEE WHO IS BEING TESTED OR WHO HAS TESTED POSITIVE FOR COVID-19

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### A. UNDERSTAND CONFIDENTIALITY ISSUES AND THE FUNDAMENTALS OF THE LAWS THAT PROHIBIT DISCRIMINATION

Employees have a right to privacy and a right to keep their medical information confidential, which are modified, but not eliminated during the COVID-19 pandemic. As the COVID-19 pandemic continues to evolve, so will the levels of protection afforded to employees.

1. **Laws Governing Discrimination, Examinations and Inquiries** – The Americans with Disabilities Act (“ADA”), Rehabilitation Act (“Rehab Act”) and Fair Employment and Housing Act (“FEHA”) prohibit discrimination based on disability and limit an employer’s ability to require medical examinations and make inquiries regarding medical conditions.
  - a. **Before Employment** – Medical examinations and disability-related inquiries are permitted after a conditional offer of employment has been made and only if all entering employees in the same job category are subject to the same examinations and inquiries.
  - b. **During Employment** – Medical examinations and disability-related inquiries are permitted only when they are *job-related and consistent with business necessity*. Generally, this standard is met when the employer has a *reasonable belief*, based on *objective evidence*, that an employee’s ability to perform the essential functions of his/her position may be impaired by a medical condition or the employee will pose a direct threat to her/himself or other employees.
    - **Direct threat** – Significant risk of substantial harm to the health or safety of the individual or others that *cannot be eliminated or reduced* by reasonable accommodation. The COVID-19 pandemic *currently* meets the direct threat standard.
  - c. **Records** – All information about applicants or employees obtained through disability-related inquiries or medical examinations must be kept confidential, maintained on separate forms and in separate medical files, and treated as a confidential medical record.
2. **Reasonable Accommodations and the Interactive Process** – The ADA, Rehab Act and FEHA generally require employers to engage in the interactive process and provide reasonable accommodations for known limitations of applicants and employees with disabilities, unless doing so would result in an undue hardship on the employer.
  - a. **Reasonable Accommodation** – A change in the work environment that allows an individual with a disability to have an equal opportunity to apply for a job, perform a job’s essential functions (fundamental job duties), or enjoy equal benefits and privileges of employment.
    - Employees are not entitled to accommodations (e.g., to telework) to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to age or an underlying medical condition.
    - Employers may consult the Job Accommodation Network website for accommodation ideas: [www.askjan.org](http://www.askjan.org)

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- b. **Undue Hardship** – An accommodation poses an undue hardship if it results in *significant difficulty or expense for the employer*, taking into account the nature and cost of the accommodation, the resources available to the employer and the operation of the employer’s business.
- c. **Interactive Process** – To determine whether an employee can perform the essential functions of his/her position, with or without an accommodation, the employer and employee must engage in the interactive process (exchange of information between the employee and employer) to evaluate possible accommodations.
  - **Questions and Medical Documentation** – If the need for an accommodation is not obvious or already known, an employer may ask questions and/or request medical documentation to determine whether the employee’s disability necessitates an accommodation. Inquiries may include:
    - How the disability creates a limitation.
    - How the requested accommodation will effectively address the limitation.
    - Whether another form of accommodation could effectively address the issue.
    - How a proposed accommodation will enable the employee to continue performing the essential functions of the employee’s position.
  - **Employer Documents** – Following the interactive process, the employer should document the discussion and the results, including the accommodation provided and/or the reason(s) the accommodation cannot be provided.

**B. OBTAIN INFORMATION FROM THE EMPLOYEE WHO IS BEING TESTED OR HAS TESTED POSITIVE, DOCUMENT THE RESPONSES AND DETERMINE WHETHER TO ALLOW THE EMPLOYEE TO CONTINUE TO WORK OR TELEWORK**

1. **Information Gathering** – A Management level employee designated with responsibility for communicating with employees regarding COVID-19 should obtain all of the following information from the employee who is being tested or has tested positive:
  - a. Date employee was diagnosed with COVID-19 or believes s/he was exposed.
  - b. If the employee has not been diagnosed – the level of exposure (direct or indirect).
  - c. If the employee has symptoms – the date symptoms first started.
  - d. Date the employee last came to work.
  - e. All other employees with whom the employee interacted with within 6 feet within the last 14 days.
  - f. All places within the facility / department / office the employee went when the employee was last at work and within the last 14 days.
  - g. All surfaces, equipment, etc. the employee touched at work within the last 7 days.
2. **Direction to the Employee** – The employee should be directed to do all of the following:
  - a. If the employee has not been tested, contact a health care provider to see if the employee can be tested for COVID-19 and obtain instructions for how long the employee must self-isolate or stay home.
  - b. Notify a Management level employee designated with responsibility for communicating with employees regarding COVID-19 if the employee receives a confirmed diagnosis, or if a confirmed diagnosis is received by anyone in the employee’s household or anyone with whom the employee has come in direct contact within 6 feet within the last 14 days.
  - c. Notify a Management level employee designated with responsibility for communicating with employees regarding COVID-19 when the employee is released to return to work.
3. **Can the Employee Who is Being Tested or has Tested Positive Work at the Jobsite?**
  - a. No
    - The employee has been diagnosed with COVID-19.
    - The employee is experiencing symptoms of COVID-19.
    - The employee is seeking a diagnosis and *either* has symptoms of COVID-19 *or* has been directed by a health care provider to remain at home.

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- b. Maybe
  - If the employee is not experiencing symptoms, the employer should consider whether the employee can be physically distanced from other employees, can reduce the risk of potentially spreading the virus by wearing a face covering, and any other means for safely allowing the employee to remain at the worksite.
  - The employer should assess the level of exposure by the person who is being tested or has tested positive for COVID-19.
  - Determine whether the person from whom the employee may have been exposed is experiencing symptoms.
  - The employee should seek guidance from his/her health care provider.

4. ***Can the Employee Who is Being Tested or has Tested Positive Telework?*** Whether an employee can telework requires analysis of a number of factors, including, but not limited to:

- a. Type of work performed.
- b. Equipment needed to perform the employee's job duties.
- c. Whether the employee is experiencing symptoms that make it difficult for the employee to telework.

## C. PROVIDE NOTICES AND RESOURCES TO ALL EMPLOYEES AND DETERMINE APPROPRIATE ACTION WITH RESPECT TO THE OTHER EMPLOYEES

1. ***Written Notice of Possible COVID-19 Exposure*** – Notices should be provided to all employees with whom the employee had direct contact, as well as those who work at the same worksite, in the same department and/or at the same facility where the employee worked. In all cases, the notice should be drafted to avoid giving any personal or other identifying information about the employee. Employees should be reminded that if they experience any symptoms of COVID-19, they should contact their health care provider for guidance and notify the employer's designated Management employee.
2. ***Determine if Other Employees Can Remain at Work*** – Employers should consider options with respect to employees who have been in contact with the employee who has been tested or has tested positive, but who have *not* experienced any symptoms. The individual circumstances at issue should be considered on a case by case basis to determine which option to select. Options include, but are not limited to:
  - a. Isolate or separate the other employees from each other, provide them with face masks and/or other personal protective gear (gloves, goggles, face shields, respirator protection, etc.), advise the employees to contact their health care provider and self-monitor for symptoms, and direct them to let a designated Management employee know if the employee experiences any symptoms in addition to contacting the employee's health care provider.
  - b. Send the employees home with instructions to self-quarantine, seek the advice of a health care provider, get tested for COVID-19 and monitor for symptoms.
3. ***Provide Employees with Guidance Issued by State and Federal Agencies***
  - a. How to protect yourself and others  
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>
  - b. Symptoms of COVID-19  
<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>
  - c. Testing  
<https://www.cdc.gov/coronavirus/2019-ncov/testing/index.html>
  - d. What to do if you are sick  
<https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>
  - e. COVID-19 Resources for California Employers and Workers  
<https://www.labor.ca.gov/coronavirus2019/>

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## **D. CLEAN THE WORKPLACE AND FOLLOW ALL APPLICABLE GUIDELINES FOR OPERATING THE BUSINESS AND PREVENTING THE SPREAD**

1. **General Cleaning Guidelines** – In most cases, employers do not need to shut down their operations. The steps that need to be taken by an employer depend on the nature of the operation and how long it has been since the employee has been at the workplace.
  - a. **Less than 7 days since the infected employee has been at the workplace**
    - Close off areas used for prolonged periods of time by the employee.
    - Wait 24 hours (or as close to 24 hours as possible) before cleaning and disinfecting to minimize the potential of other employees being exposed.
    - During the waiting period, open outside doors and windows to increase air circulation.
    - Clean and disinfect according to the guidance issued by the CDC, EPA and OSHA.
  - b. **7 days or more have passed since the infected employee has been at the workplace**
    - Continue routinely cleaning and disinfecting all high-touch surface areas, as additional cleaning is not necessary.
2. **General Requirements for Operating** – The CDC, OSHA and State of California have all provided industry-specific guidance, which contains direction regarding how to perform each of the following mandatory obligations:
  - a. Perform a detailed risk / hazard assessment
  - b. Develop and implement a site-specific protection plan
  - c. Develop and implement control measures and screenings
    - Screening and monitoring employees
    - Managing sick workers
    - Addressing return to work after exposure to COVID-19
  - d. Develop and implement engineering controls
    - Limit contact with others
    - Add touch-free methods for completing work tasks
    - Supply and provide training regarding proper use of protective gear
  - e. Develop and implement cleaning, disinfection and sanitation protocols
  - f. Develop and implement physical distancing guidelines for employees and visitors
  - g. Review policies governing leave from work and teleworking
  - h. Train employees regarding how to follow your policies and minimize the spread of COVID-19 at work, at home, in shared housing and in shared transportation
  - i. Provide notice to employees and the local public health official of COVID-19 exposure and/or diagnosis
3. **Industry Specific Publications** – Each of the following guidelines should be reviewed and followed within your operation, to the extent applicable, with respect to general operations and cleaning your workplace in the event of a confirmed COVID-19 diagnosis or suspected exposure.
  - a. **California’s Statewide Industry Guidance**  
<https://covid19.ca.gov/industry-guidance/#top>
  - b. **Cal-OSHA’s Industry Guidance and Checklists**  
<https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>
  - c. **CDC / EPA**
    - Guidelines for cleaning and disinfecting your building or facility  
<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>
    - Guidance for cleaning and disinfecting public spaces, workplaces, businesses, schools and homes  
<https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>
    - Guidelines for Businesses and Employers

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<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

- Agricultural Workers and Employers – Interim Guidance from CDC and U.S. Department of Labor  
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>

**d. OSHA**

- Guidance on Preparing Workplaces for COVID-19  
<https://www.osha.gov/Publications/OSHA3990.pdf>
- Guidance on Returning to Work  
<https://www.osha.gov/Publications/OSHA4045.pdf>

**E. DETERMINE WHEN EMPLOYEE CAN RETURN TO WORK**

When an employee can be around others (end isolation) depends on the circumstances at issue for that employee. The following is a summary of the CDC's guidance. See also, the attached chart from the CA Department of Public Health identifying the Criteria For Employees to Return to Work as of *June 16, 2020*.

**1. *Employee thinks or knows s/he had COVID-19 and the employee had symptoms***

- a. **No Test** – Employee who has not received a follow-up test to see if s/he still has COVID-19 can be around others after all of the following have occurred:
- 3 days have passed with no fever (without the use of fever-reducing medication); and
  - Respiratory symptoms (cough, shortness of breath, difficulty breathing) have improved (without the use of symptom-altering medication); and
  - At least 10 days have passed since symptoms first appeared.
- b. **Test** – Employees who have been tested to see if they still have COVID-19 can be around others after all of the following have occurred:
- 3 days have passed with no fever (without the use of fever-reducing medication); and
  - Respiratory symptoms (cough, shortness of breath, difficulty breathing) have improved (without the use of symptom-altering medication); and
  - The employee has received 2 negative tests in a row, at least 24 hours apart.

**2. *Employee tested positive for COVID-19 but had no symptoms***

- a. **No Test** – Employee who has not received a follow-up test to see if s/he still has COVID-19 can be around others if both of the following are true:
- The employee continues to have no symptoms; and
  - At least 10 days have passed since the employee tested positive for COVID-19.
- b. **Test** – Employees who have been tested to see if they still have COVID-19 can be around others if employee has received 2 negative tests in a row, at least 24 hours apart.

**3. *Employee has been around a person who has tested positive for COVID-19***

- a. **No Test** – Whether the employee should be permitted to be around others will depend on how close the contact was with the person who has tested positive (e.g., living in the same house vs. spent time in the same room). The closer the contact, the more likely the employee should stay home for 14 days after exposure.
- b. **Test** – If the employee is being tested but does not yet have the results, whether the employee should be permitted to be around others will depend on the circumstances, including, but not limited to:
- How close the contact was with the person who has tested positive (e.g., living in the same house vs. spent time in the same room). The closer the contact, the more likely the employee should stay home for 14 days after exposure.
  - Whether the employee has symptoms.
  - Whether the employee's health care provider has advised the employee to stay home until the test results are known.

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4. ***Additional factors to consider*** – Each person’s unique situation should be analyzed in determining when they should be around other people, including, but not limited to a weakened immune system due to a health condition or medication. These employees may need to stay home longer than 10 days and should consult their health care providers to determine whether they should be tested. If testing occurs, the employee can be around others when s/he has received 2 negative tests in a row, at least 24 hours apart.

## **F. IMPLEMENT DAILY SCREENING, PROTECTIVE GEAR AND INFECTION CONTROL PRACTICES**

1. ***Scope of Symptom Screening*** – Screen your employees (and all visitors) daily before they enter any building or facility, and before they return to work after quarantine, isolation, confirmed COVID-19 diagnosis or potential exposure to COVID-19.
  - a. **Permitted** – During the COVID-19 pandemic, employers are *permitted* to ask employees about the following (verbally and in writing) provided that the screening is conducted in a non-discriminatory manner and the results are maintained in a confidential medical file separate from employees’ personnel files:
    - **Symptoms**
      - Fever (100.4° F or higher)
      - Chills
      - Sore throat
      - Cough
      - Shortness of breath
      - Difficulty breathing
      - Persistent pressure in chest
      - Runny or stuffy nose
      - Body, muscle or head aches
      - Fatigue
      - New loss of taste or smell
      - Congestion
      - Nausea, abdominal pain or vomiting
      - Diarrhea
    - **Temperature** – Employers can take an employee’s temperature and can ask the employee to report his/her temperature.
    - **Exposure** – Employers may ask employees about their exposure to people who have been diagnosed with COVID-19, or who have been exposed.
    - **Travel** – Employers should follow the guidance of the CDC and state/local public health officials to determine if they can require employees who have returned from traveling to not come to work until they can confirm they do not have symptoms or do not have COVID-19.
    - **Test Results** – Employers can require employees to be tested for COVID-19 as a condition of returning to work.
    - **Written Confirmation of Ability to Return** – Employers may ask employees to provide a note from a health care provider certifying the employee is able to return to work. However, if an employee cannot obtain the written confirmation, the employer should be prepared to discuss a reasonable alternative.
  - b. **Prohibited** – Employers cannot do any of the following:
    - **Antibody Testing** – Employers cannot require employees to have COVID-19 antibody testing.
    - **Vaccination** – Employers cannot require employees to get the COVID-19 vaccine (whenever it is developed).
  - c. **CCPA Notice** – Employers must provide employees with an appropriate CCPA Notice describing the personal information sought during the screening if the Company’s annual gross revenues are over \$25 million (or other criteria subjecting the employer to the CCPA).

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- d. **High Risk Employees** – An employee who the CDC has indicated has a higher risk for severe illness if they get COVID-19 cannot automatically be excluded from work. An individualized assessment must be conducted to determine whether (based on reasonable medical judgment using the most current medical knowledge and/or the best available objective evidence) the employee’s disability (not the disability in general) poses a direct threat to his/her health that cannot be eliminated or reduced by a reasonable accommodation. Factors to be considered include:
- Duration of the risk
  - Nature and severity of the potential harm
  - Likelihood that the potential harm will occur / the employee will be exposed to COVID-19 at the workplace
  - Measures the employer is taking in general to protect all workers
  - Imminence of the potential harm
  - Severity of the pandemic in the particular area
  - The employee’s own health (e.g., whether the employee’s disability is well-controlled)

## 2. *Protective Gear and Infection Control Practices*

- a. **Gear** – Employers may (and in some cases must) require employees to wear personal protective gear (e.g., face coverings, gowns, gloves, etc.).
- Face Coverings
    - *Required*
      - Inside of, or in line to enter, any indoor public space.
      - Obtaining services from the healthcare sector.
      - Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle.
      - Engaged in work, whether at the workplace or performing work off-site, when:
        - Interacting in-person with any member of the public;
        - Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;
        - Working in any space where food is prepared or packaged for sale or distribution to other;
        - Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities; and/or
        - In any room or enclosed area where other people (except for members of the person’s own household or residence) are present when unable to physically distance.
      - Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended.
      - While outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible.
    - *Exceptions* (in addition to those applicable to children and incarcerated individuals):
      - Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
      - Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
      - Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
      - Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
      - Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least 6 feet away from persons who are not members of the same household or residence.

- Persons who are engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least 6 feet from others.
  - Disability-Related and Religious Accommodations – If an employee with a disability needs a disability-related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, gowns designed for individuals who use wheelchairs, etc.), or a religious accommodation (e.g., modified equipment due to religious garb), the employer should engage in the interactive process with the employee to determine if the accommodation can be provided without creating an undue hardship on the employer’s business.
- b. **Practices** – Employers should require all employees to observe infection control practices, including, but not limited to:
- Maintain a proper distance of at least 6 feet from others.
  - Cover your cough or sneeze with a tissue and then immediately throw the tissue in the trash or use the inside of your elbow. Always wash your hands immediately after coughing or sneezing.
  - Wear a cloth face covering over your mouth and nose.
  - Do not touch your eyes, nose or mouth.
  - Wash your hands often with soap and water for at least 20 seconds. If soap and water are not readily available, clean your hands with a hand sanitizer containing at least 60% alcohol.
  - Clean and disinfect frequently touched objects and surfaces daily using the proper disinfectants. For the EPA’s list of disinfectants to use during the COVID-19 pandemic, use the following link:  
<https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>
  - Self-monitor for COVID-19 symptoms.
  - Immediately notify a Management level employee designated with responsibility for communicating with employees regarding COVID-19 if any symptoms develop or if you are (or potentially are) exposed to COVID-19.
- c. **Facility and Operational Modifications** – Employers should make appropriate physical modifications to the workplace including, but not limited to:
- Perform routine cleaning.
  - Conduct regular training of employees regarding COVID-19 policies and procedures.
  - Implement the use of touch-free methods (e.g., time-clocks, automatic doors, etc.).
  - Erect barriers to separate employees and/or visitors from employees.
  - Increase spaces between employees.
  - Move the location where employees perform job duties.
  - Modify schedules.
  - Eliminate marginal (less critical or incidental) job functions to reduce the amount of time employees are in the workplace.
  - Close or limit access to common areas.
  - Improve engineering controls using the building’s ventilation system.
  - Provide alternate means for employees who typically use shared transportation.
  - Allow teleworking.
  - Prohibit in-person meetings and require the use of conference calls, Zoom or other technology to communicate.
  - Eliminate (or minimize) non-essential travel.



## G. REPORTING OBLIGATIONS

### 1. *OSHA Injury and Illness 300 Log* (29 C.F.R. Part 1904)

- a. **Standard for Recording** – COVID-19 can be a recordable illness if an employee is infected as a result of performing work-related duties. Employers must conduct a reasonable and objective investigation and analysis of COVID-19 cases and record the case if:

- The case is a confirmed case of COVID-19 as defined by the CDC;
- The case is work-related in that an event or exposure in connection with the employee’s work either caused or contributed to the COVID-19 case; and
- The case involves 1 or more of the general recording criteria, including, but not limited to: medical treatment beyond first aid, death, loss of consciousness, days away from work (for purposes other than quarantine), restricted work, transfer to another job, etc.

If, after conducting a reasonable and objective investigation and analysis as outlined below, the employer cannot determine whether it is more likely than not that exposure to COVID-19 in the workplace played a causal role in a particular case, the employer does not need to record the illness.

- b. **Standard for Immediate Reporting** – A report to OSHA must be made immediately (no longer than 8 hours after the employee knows or with diligent inquiry would have known) if the employee dies or becomes seriously ill at work and is admitted as in-patient at a hospital, regardless of the duration.

- c. **Employer’s Investigation** – To determine whether a COVID-19 diagnosis is work-related and therefore recordable, employers should:

- Ask the employee how the employee believes s/he contracted COVID-19;
- Discuss with the employee, while respecting privacy concerns, the activities both inside and outside of work that may have led to the illness;
- Review the employee’s work environment for potential COVID-19 exposure, including, but not limited to:
  - Other instances of employees who contracted COVID-19 and the circumstances surrounding those cases.
  - The employer’s implementation and enforcement of steps to address the spread of COVID-19 in the workplace consistent with guidance from the CDC and OSHA (e.g., use of face coverings, social distancing and cleaning procedures).
- Make a determination based on information reasonably available to the employer at the time the determination is made, including evidence of causation from the employee, the employee’s medical providers and the public health authorities where that information is available.

- d. **Factors that weigh in favor of a determination that the COVID-19 illness is work-related:**

- Several cases develop among employees who work closely together *and there is no alternative explanation*.
- COVID-19 is contracted shortly after a lengthy, close exposure to a particular customer or coworker who has a confirmed case of COVID-19 *and there is no alternative explanation*.
- The employee’s job duties include *frequent, close exposure to the general public* in a locality with ongoing community transmission *and there is no alternative explanation*.

- e. **Factors that weigh in favor of a determination that the COVID-19 illness is not work-related:**

- The employee is the only employee to contract COVID-19 in the vicinity and the employee’s job duties do not include having frequent contact with the general public, regardless of the rate of community spread.
- The employee, outside the workplace, closely and frequently associated with someone (e.g., a family member, significant other or close friend) who has COVID-19, is not a coworker, and exposes the employee during the period in which the individual is likely infectious.

### 2. *Workers’ Compensation*

- a. **Overview** – Governor Newsom’s Executive Order N-62-20, signed May 5, 2020, provides that employees who work at a jobsite outside of their home at the direction of their employer between March 19, 2020 and July 5,

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2020 and who test positive for COVID-19 within 14 days of working at their jobsite are presumed to have contracted any COVID-19-related illness at work for the purposes of awarding workers' compensation benefits.

- b. **Presumption Criteria** – To qualify for the presumption, all of the following conditions must be met:
    - The employee must test positive for or be diagnosed with COVID-19 within 14 days after a day the employee worked at his/her employer's jobsite at its direction.
    - The day the employee worked at his/her employer's jobsite was on or after March 19, 2020 through July 5, 2020.
    - The employer's jobsite is not the employee's home or residence.
    - If the employee is diagnosed with COVID-19, the diagnosis was done by a medical doctor and confirmed by a positive test for COVID-19 within 30 days of the date of the diagnosis.
  - c. **Disputing the Presumption** – An employer may dispute the presumption that the employee's COVID-19 illness is work-related by presenting evidence that the employee did not contract COVID-19 at work or is otherwise ineligible for the presumption. The employer will have up to 30 days to investigate and make a decision whether to accept or deny an employee's COVID-19 workers' compensation claim.
3. **Local Public Health Officials** – Employers must notify the local health official if an employee reports that s/he has been diagnosed with COVID-19.

## H. PAYMENT OBLIGATIONS

1. **During Screening Process** – Mandatory screening is deemed time worked, for which an employee must be paid.
2. **If the Employee is Sent Home Because S/he is Experiencing Symptoms or Has Been Exposed**
  - a. **Non-Exempt Employees** – In accordance with California's reporting time pay rules, if a non-exempt employee reports to work for his/her regularly scheduled shift but is required to work fewer hours or is sent home, the employee must be compensated for at least 2 hours, but no more than 4 hours, of reporting time pay. With respect to COVID-19 issues, reporting time pay obligations do not apply unless a state of emergency is declared which requires an employer to cease operations. For additional information, see:  
[https://www.dir.ca.gov/dlse/FAQ\\_ReportingTimePay.htm](https://www.dir.ca.gov/dlse/FAQ_ReportingTimePay.htm).
  - b. **Exempt Employees** – Deductions from an exempt employee's salary can only be made in limited circumstances, none of which apply to an employee sent home from work early for the day because s/he is experiencing symptoms or has been exposed to COVID-19.
3. **FFCRA Paid Sick leave** – Requires private employers with fewer than 500 employees to provide paid sick leave of up to 2 weeks (80 hours), in addition to any other paid leave available to the employee.
  - a. **Reasons for Leave** (among others that are not related to an employee's diagnosis or exposure)
    - #1 - Employee is subject to a Federal, State or Local quarantine or isolation order related to COVID-19.
    - #2 - Employee has been advised by a health care provider to quarantine due to concerns related to COVID-19.
    - #3 - Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis from a health care provider.
  - b. **Rate of Pay**
    - Hourly Rate - 100% of the employee's average regular rate of pay or the applicable minimum wage, whichever is higher.
    - Maximum Amount - \$511 per day and \$5,110 in total.
4. **CA Paid Sick Leave** – Employees are permitted to use paid sick leave but cannot be required to do so.

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5. **CA Supplemental Paid Sick Leave** – Governor Newsom’s Executive Order N-51-20, signed April 16, 2020, requires private business with 500+ Eligible Food Sector Workers to provide supplemental paid sick leave of up to 2 weeks (80 hours).
  - a. **Eligible Employees** – The person must be an essential critical infrastructure worker exempt from the Stay-At-Home Order imposed by Executive Order N-33-20 who works for a Hiring Entity, outside of the home, in a job that falls within any of the following categories:
    - Wage Order 3 – Canning, Freezing and Preserving Industry
    - Wage Order 8 – Industries Handling Products After Harvest
    - Wage Order 13 – Industries Preparing Agricultural Products for Market, on the Farm
    - Wage Order 14 – Agricultural Occupations
    - Works for a Hiring Entity that operates a food facility (Health & Safety Code §113789(a)-(b))
    - Delivers food from a food facility (Health & Safety Code §113789(a)-(b)) for or through a Hiring Entity
  - b. **Reasons for Leave** – A Hiring Entity is required to provide supplemental paid sick leave to an Eligible Food Sector Worker who is *unable to work* for any of the following 3 reasons:
    - #1 – The Eligible Food Sector Worker is subject to a Federal, State or Local quarantine or isolation order related to COVID-19.
    - #2 – The Eligible Food Sector Worker has been advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.
    - #3 – The Eligible Food Sector Worker is prohibited from working by the Hiring Entity due to health concerns related to the potential transmission of COVID-19.
  - c. **Rate of Pay**
    - Hourly Rate - 100% of the employee’s regular rate of pay for the last pay period, California’s minimum wage, or the local minimum wage, whichever is higher.
    - Maximum Amount - \$511 per day and \$5,110 in total.
6. **Company Policies** – The employer should provide leave in accordance with the terms and conditions governing vacation, PTO, personal leave, etc.

## I. REMINDERS

1. **Maintain all appropriate documentation.**
  - a. Update your IIPP to include an Infection Prevention section that specifically addresses COVID-19.
  - b. Keep records of all actions taken by you and your employees.
  - c. COVID-19 related policies, procedures, rules and signs posted and/or distributed to employees.
  - d. Correspondence with employees regarding COVID-19 matters.
  - e. Telework guidelines.
  - f. Documentation to support all COVID-19 related leave requests and the leave actually provided to employees.
2. **Continue to monitor the most recent guidelines and requirements of the State, County, CDC, OSHA, EEOC, DFEH, etc.**
3. **Be reasonable – always!**

**CA Department of Public Health Criteria For Employees to Return to Work as of *June 16, 2020***

Description	Employee's Circumstances	CA Minimum Criteria for Employees to Return to Work
<b>#1 - Symptomatic Positive</b>	Employee <i>with symptoms</i> who has a <i>confirmed diagnosis</i> of COVID- 19	Employee can return if: <ul style="list-style-type: none"> <li>• At least 3 days (72 hours) have passed since recovery (resolution of fever without the use of fever-reducing medications) <u>and</u></li> <li>• Respiratory symptoms (e.g., cough, shortness of breath, etc.) have improved; <u>and</u></li> <li>• At least 10 days have passed since symptoms first appeared.</li> </ul>
<b>#2 - Asymptomatic Positive</b>	Employee <i>never had symptoms</i> and has received a <i>confirmed diagnosis</i> of COVID-19	<ul style="list-style-type: none"> <li>• Employee can return if a minimum of 10 days have passed since the date of the first positive COVID-19 test.</li> <li>• If the employee develops symptoms, then the criteria for #1 applies.</li> </ul>
<b>#3 - Symptomatic Negative</b>	Employee <i>had symptoms</i> of COVID-19 but <i>test result returned negative</i>	The criteria for #1 applies.
<b>#4 - Asymptomatic Negative</b>	Employee <i>never had symptoms</i> but was <i>tested</i> due to close contact and received a <i>negative result</i>	<ul style="list-style-type: none"> <li>• Employee should quarantine at home for 14 days after the last known close contact with the person who was diagnosed with a confirmed case because symptoms can develop even after testing negative within 14 days after exposure.</li> <li>• The Local Health Department may consider allowing earlier return to work only for an employee in a critical infrastructure industry in which the essential operations of the workplace would be compromised by quarantine of the employee and no alternate staff can perform the same role.</li> </ul>
<b>#5 - Symptomatic Untested</b>	Employee <i>had symptoms</i> of COVID-19 but was <i>not tested</i>	<ul style="list-style-type: none"> <li>• Testing is highly recommended.</li> <li>• If the employee cannot be tested, the criteria for #1 applies.</li> </ul>

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