

CLIENT ALERT: COVID-19 and Flu Season at Work
Updated October 21, 2020

At the end of July, we published a [client alert](#) outlining the CDC's return to work guidance and Maine's guidance on testing and travel restrictions. As we move into flu season, we recognize employers may have difficulty determining who should stay home, for how long, when employees can be tested, and also eligibility for FFCRA benefits. Below we provide an update on the CDC's latest return to work guidance as well as information about workplace COVID-19 testing programs. We also highlight the CDC's new definition of "close contact."

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We are directing sick employees with the flu to stay home: do they get paid FFCRA leave?

Employers should tell employees with flu symptoms to stay home. Employees experiencing flu symptoms (or a cold) will typically need to use their accumulated sick time to pay for their time away from work; they would not qualify for paid FFCRA leave unless (1) they have symptoms of COVID-19 **and** are actively seeking a medical diagnosis; (2) they are subject to a federal, state or local quarantine order; or (3) have been advised by a health care provider to self-quarantine related to COVID-19. The overlap between COVID-19 symptoms and flu can make this tricky. In the case where the employee is unsure if it is COVID-19 they should seek a medical diagnosis (which could include testing). For more information on distinguishing the flu and COVID-19, consult the [CDC](#).

When can an employee who tests positive for COVID-19 return to work?

If the employee tested positive for COVID-19 but is asymptomatic, they may return to work once at least 10 days have passed since their positive COVID-19 test. This isolation time would qualify for paid FFCRA leave.

If the employee tested positive for COVID-19 and is exhibiting symptoms, they may return to work once: 1) at least 10 days have passed since their symptoms first appeared, 2) at least 24 hours have passed with no fever and without fever-reducing medication, **and** 3) other symptoms have improved. This time would qualify for paid FFCRA leave.

When can an employee who has symptoms of COVID-19 or has had contact with someone with COVID-19 return to work?

Employees exhibiting symptoms of COVID-19 (but who have not been tested) can return to work once: 1) at least 10 days have passed since their symptoms first appeared, 2) at least 24 hours have passed with no fever and without fever-reducing medication, **and** 3) other symptoms have improved. This time would qualify for paid FFCRA leave. Note that per the CDC, loss of taste and smell may persist for week or months after recovery and need not delay the end of isolation.

Employees who have been exposed to someone with COVID-19 must quarantine and may return to work 14 days from the last date of exposure. This quarantine time would qualify for paid FFCRA leave. Note that in cases where an individual is living with someone who has COVID-19 and cannot avoid close contact, the CDC recommends the individual begin their 14 day quarantine once the household member is no longer sick and is cleared to end their home isolation. Therefore, an individual living with someone who has COVID-19 may end up quarantining for more than 14 days – for the duration of the household member’s illness *plus* an additional 14 days.

What qualifies as “close contact”?

Previously, the CDC defined close contact as spending 15 minutes or more within six feet of someone who tested positive for COVID-19. As of Wednesday, October 21, the CDC changed the definition of close contact to a total of 15 minutes or more over a 24-hour period. This change accounts for multiple brief encounters with an infected person over a longer period of time.

What does the Maine CDC recommend for return to work protocol?

On July 21, the Maine CDC updated their guidance to be consistent with CDC guidance, as outlined above.

Can we implement a COVID-19 testing program for our workplace?

With flu season fast approaching, and the anticipated challenge of differentiating between flu and COVID-19 symptoms, some employers may consider a testing approach. Although the CDC does not currently recommend a test-based strategy for ending isolation, if an employee has a cold or flu and tests negative for COVID, they may not need to isolate for the required timeframes. To be clear, while the CDC discourages employers from requiring a COVID test or a doctor’s note for a sick employee to return to work, requiring a negative COVID test is not prohibited.

Per the CDC, a testing strategy “requires negative results using RT-PCR for detection of SARS-CoV-2 RNA and an FDA Emergency Use Authorization (EUA) for COVID-19 from at least two consecutive respiratory specimens collected [at least] 24 hours apart (total of two negative specimens).” Furthermore, all “test results should be final before isolation is ended. Testing guidance is based on limited information and is subject to change as more information becomes available.” To date, this guidance remains in effect as the CDC’s position based on available data continues to be that individuals with mild to moderate COVID-19 remain infectious no longer than 10 days after symptom onset, regardless of test results.