

CLIENT ALERT: The Latest Guidance on COVID-19
September 14, 2021

We continue to track developments and best practices for mitigating the spread of COVID-19 in the workplace. In this client alert we summarize the latest developments from the EEOC and the CDC. Please don't hesitate to get in touch if you need provide additional guidance on these issues.

CDC Recommendations

Effective August 11, the CDC announced it was updating its guidance to focus on preventing serious illness and hospitalization from COVID-19. The CDC recommends paying close attention to community transmission and local hospitalization rates to guide prevention protocol.

- The CDC recognizes the following as **integral prevention strategies**: 1) individuals stay up to date with vaccination, 2) improved ventilation, 3) testing persons who are symptomatic and have been exposed to COVID-19, and 4) isolating when infected with COVID-19.
- **Symptomatic employees**: employees with symptoms of COVID-19 should isolate. Employees who arrive to work with symptoms, or become sick at work, should be immediately separated from others (employees, customers, visitors) and be sent home. Employees who test positive or are presumed positive for COVID-19 should follow return to work protocol, outlined below.
- **Employees exposed to COVID-19**: individuals recently exposed to a confirmed or suspected COVID-19 infection should wear a mask for 10 days. If asymptomatic, the exposed individual should test after day 5, regardless of vaccination status. If an individual develops symptoms within 5 days of exposure, they should test immediately. Particularly notable for employers, contact tracing is now recommended only in health care settings and certain “high-risk congregate settings” such as long-term care facilities, correctional facilities, and homeless shelters.
- **Return to work protocol**: individuals who test positive for COVID-19 should:
 - Isolate for at least five days. The individual may end isolation after 5 days if they have been without a fever for at least 24 hours (without the use of fever reducing medication), and all other symptoms have improved.
 - Wear a well-fitting and high quality mask or respirator for 10 days. Individuals should have two consecutive negative test results to discontinue masking. If either test result is positive, they should continue wearing a mask and test every 48 hours until they receive two negative test results.

EEOC Guidance

Over two years ago, the Equal Employment Opportunity Commission (EEOC) recognized COVID-19 posed a “direct threat” in the workplace and therefore employers could screen employees for symptoms. Now, employers must assess several factors to determine whether workplace screenings are warranted.

- Employers can mandate COVID-19 screening and testing when doing so is job-related and consistent with business necessity. When implemented, screening and testing strategies should include *all* employees and visitors to the workplace, including those who are vaccinated against COVID-19.
- To assess whether workplace screening and testing is justified, employers should consider:
 - Level of community transmission,
 - Vaccination status of employees,
 - Accuracy and speed of processing for different types of COVID-19 viral tests,
 - The degree to which breakthrough infections are possible for employees who are “up to date” on covid-19 vaccinations,
 - The ease of transmissibility of the current variant(s),
 - The possible severity of illness from the current variant,
 - What types of contacts employees may have with others in the workplace, or while performing their job, and
 - The potential impact on business operations if an employee enters the workplace with COVID-19.
- Employers should consider reasonable accommodations for employees as necessary.
- Employers may require a note from a medical provider to confirm it is safe for an employee to return to work.