

First Steps: What to Do When Your Employee Tests Positive for the Coronavirus

You have just been notified that one of your employees or an on-site contractor employee has tested positive for COVID-19 (caused by the new coronavirus). What are your legal obligations, and what should you do to mitigate the risk of other staff becoming infected and the myriad other business risks that go along with a workplace coronavirus incident? Here are some key considerations to keep in mind if or when COVID-19 strikes your workforce:

- **Who?** You should immediately focus on the employee or on-site contractor employee in your business who has tested positive, as this individual is the one who can best help identify the scope of your obligations and the remediation you will need to undertake. First and foremost, the infected employee should be instructed to stay home for at least 14 days. If the employee has not done so already, he/she should be encouraged to contact a qualified healthcare provider to determine whether an extended period of self-quarantining or other special treatment is required.

All information that the employee provides concerning his/her medical condition should be treated with the utmost confidence — particularly with respect to the employee's identity. While there certainly will be a need to disclose a coronavirus exposure, there is no need to attribute it to a specific person. Identifying the victim to co-workers by name as having the coronavirus could trigger a claim for violating the Americans with Disabilities Act or give rise to a potential claim later for harassment or discrimination.

Additionally, the infected employee should be asked to identify all individuals with whom he/she came into contact in the workplace during the 14-day period prior to their diagnosis.

- **What?** The most important action you can take when first discovering someone in your business has tested positive for the coronavirus is to gather all the relevant facts. You will need to determine the extent of the potential exposure, both in terms of the dates that the coronavirus carrier was working while potentially infected, and where and with whom that carrier was working.
 - **When?** There is a minimum 28-day window with which you should be concerned, which comprises both a prospective 14-day quarantine period and a retrospective 14-day incubation period. The quarantine period lasts for 14 days after the employee has tested positive for the coronavirus and defines how long the affected employee should
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refrain from being on-site. The incubation period runs for 14 days prior to the employee's positive test result, which will determine the extent of mitigation efforts with regard to other employees who were potentially exposed to the coronavirus victim before the positive test result.

The following table details the minimum time window for your coronavirus efforts:

DATE OF POSITIVE DIAGNOSIS	INCUBATION PERIOD		QUARANTINE PERIOD*	
	START	END	START	END
3/1	2/16	3/1	3/1	3/15
3/2	2/17	3/2	3/2	3/16
3/3	2/18	3/3	3/3	3/17
3/4	2/19	3/4	3/4	3/18
3/5	2/20	3/5	3/5	3/19
3/6	2/21	3/6	3/6	3/20
3/7	2/22	3/7	3/7	3/21
3/8	2/23	3/8	3/8	3/22
3/9	2/24	3/9	3/9	3/23
3/10	2/25	3/10	3/10	3/24
3/11	2/26	3/11	3/11	3/25
3/12	2/27	3/12	3/12	3/26
3/13	2/28	3/13	3/13	3/27
3/14	2/29	3/14	3/14	3/28
3/15	3/1	3/15	3/15	3/29
3/16	3/2	3/16	3/16	3/30
3/17	3/3	3/17	3/17	3/31
3/18	3/4	3/18	3/18	4/1
3/19	3/5	3/19	3/19	4/2
3/20	3/6	3/20	3/20	4/3
3/21	3/7	3/21	3/21	4/4
3/22	3/8	3/22	3/22	4/5
3/23	3/9	3/23	3/23	4/6
3/24	3/10	3/24	3/24	4/7
3/25	3/11	3/25	3/25	4/8
3/26	3/12	3/26	3/26	4/9
3/27	3/13	3/27	3/27	4/10
3/28	3/14	3/28	3/28	4/11
3/29	3/15	3/29	3/29	4/12
3/30	3/16	3/30	3/30	4/13
3/31	3/17	3/31	3/31	4/14

It should be noted that a qualified healthcare professional may recommend a longer quarantine period depending on the facts and circumstances of the patient's individual case, and an employee should not return to work even following a quarantine period if he/she continues to have signs and symptoms of respiratory distress or ongoing coronavirus problems.

- **Where?** Based on your discussions with the infected employee, identify all areas within the workplace where the employee was physically present during the incubation period (see chart above). Those particular areas should be sanitized immediately by a qualified professional in accordance with Centers for Disease Control and Prevention (CDC) guidelines (see <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>). Depending on the extent of exposure of other staff and the affected area requiring sanitization, you may need to consider completely shutting down the worksite for a minimum of 14 days and allow employees to stay at home and, if possible, work remotely.
- **Why?** You should immediately contact all other staff identified by the infected employee as individuals with whom he/she had contact during the incubation period. Without disclosing the identity of the infected employee, these other staff members should be advised that an individual was physically present in the work area who has tested positive for the coronavirus. Those staff members should be requested to remain at home for the following 14 days (at a minimum, depending on whether such employees manifest additional signs and symptoms or themselves test positive for the coronavirus, which would extend the period of necessary self-isolation).

Additionally, all other contractors should be notified of the possible worksite exposure, including any general contractor, if applicable, and property owner of the worksite, if applicable. Likewise, if your company is subject to any collective bargaining agreements, it would be wise to review your CBA to determine whether you must notify the union of either the exposure potential to other employees and/or the steps taken with respect to quarantining infected employees and/or temporarily closing facilities for sanitization.

Conversely, if you are notified by another contractor that one of its employees has tested positive for the coronavirus, you should follow the same steps as you would for one of your own employees (i.e., identify the incubation period, persons with whom the infected individual had contact, and places on the job site where the infected individual had access). You will need to work collaboratively with the other contractor to ensure that proper sanitization is completed and that other individuals in the

workforce at large are properly notified and assessed as necessary. Depending on the findings of this inquiry, company employees working on-site should be advised and potentially quarantined according to the same procedure as when a fellow employee had tested positive.

- **How?** Remain mindful of the necessity of maintaining the confidentiality of the infected employee's health information, especially when communicating with other staff. If possible, impacted employees should be permitted to work remotely from home.

You should also determine how you will handle compensation for affected employees. For nonexempt hourly employees who cannot work remotely, you will need to determine whether you will pay them during the 14-day quarantine period, and whether you will require that they use any accrued vacation or sick leave.

As always, honesty remains the best policy when addressing these issues with your other employees. While maintaining confidentiality by not disclosing the infected employee's identity, you should advise employees that an individual who has been physically present in the workplace during the prior two-week period has since tested positive for the coronavirus. You should explain the next steps the company must take — whatever they are — that are necessary for the safety and protection of all your co-workers. To the extent necessary, advise your other employees that the worksite, or portions thereof, will need to be shut down for a certain period of time or until further notice so that the premises may be properly cleaned and sanitized in accordance with CDC standards. Questions and concerns should be addressed to your Human Resources Department.

Lastly, you should continue to be vigilant to monitor your workforce for exposure to the coronavirus, especially when there has already been an employee testing positive for such. Continue to inquire as to whether any employee has left the country in the past 14 days (especially to high-risk areas such as China, South Korea, Iran, and Italy), whether they have had any signs and symptoms of respiratory distress (especially fever and coughing), and whether they have been in contact with other individuals who have either been in high-risk areas, have had a coronavirus diagnosis, or have recently experienced signs and symptoms of the coronavirus or respiratory problems.

- **Next Steps.** COVID-19 has already drastically impacted all aspects of our society in a very short time. The circumstances of its treatment and the laws and regulations that the government is imposing to deal with its spread are also rapidly changing.
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Jones Walker, LLP, is prepared to assist you in navigating these uncertain legal challenges. For additional information concerning how to handle your coronavirus-related issues, please contact our legal team, whose members stand ready to provide up-to-date, solutions-focused legal guidance and advice.



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