

This post is for general informational purposes only and should not be considered to constitute legal advice.

Employment Update: COVID Scenarios Chart
Posted February 23, 2021

Attached is a helpful resource we put together to assist you in navigating different COVID scenarios. This is provided for informational purposes only and is not intended as legal advice. If you have questions about specific situations please reach out for individual legal counsel. We will continue to provide updates as new information is developed.

Also, we are considering holding a legal update webinar for our clients on April 7. You will soon receive an email survey asking for your input. We value your input, so please take a moment to respond to the survey when it arrives.

Thank you!
DPF Employment Team

COVID Scenarios	Exclude from the workplace?	With or Without Pay?	When can they return?	Notice required?	Exclude Others from the Workplace?	Testing Required?
<p><i>Employee informs employer that they have tested positive for COVID / Employee is asymptomatic.</i></p>	<p>Yes.</p>	<p>If employee was exposed to COVID in the workplace → With pay, under Cal/OSHA ETS employee must be paid while out of work if they would otherwise be able to work and cannot work remotely; likely covered by WC.</p> <p>If employee was exposed to COVID outside the workplace → Pay optional based on employer’s policy; employee can elect to use FFCRA sick leave if provided by employer and available (up to 80 hours).</p>	<p>Can return to work when the following criteria are met: A minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test. <i>[And they have not developed symptoms]</i></p> <p><u>Under Cal/OSHA ETS:</u> If the employee was exposed in the workplace, employer cannot require a negative test to return to work. Just have to meet the criteria above.</p>	<p>Yes:</p> <ul style="list-style-type: none"> • Within 1 business day employer must provide written notice (<i>see attached template</i>) to ALL employees, contractors, and other employers that were at the same worksite* as the positive employee during the <i>high risk period</i>, which is the 48 hour period prior to the date the positive individual was tested for COVID; and • Within 3 business days provide written notice to employer’s WC provider.** • If employee becomes seriously ill or dies at work or in connection with employment, must report to Cal/OSHA within 8 hours. 	<p>Potentially, yes: Employer must identify all employees who were in close contact with the positive employee during the high risk period and exclude them from the workplace immediately.</p> <p>An employee had “close contact” if they were within 6 feet of the positive individual for a cumulative total of 15 minutes or more in any 24-hour period during high risk period, regardless of the use of facial coverings.</p>	<p>Yes: Must offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential COVID-19 exposure in the workplace; testing does not have to be at the workplace but employees must be paid for the time to go get tested.</p> <p>Employees may decline to get tested; employer is just required to offer testing at no cost.</p>

COVID Scenarios	Exclude from the workplace?	With or Without Pay?	When can they return?	Notice required?	Exclude Others from the Workplace?	Testing Required?
<p><i>Employee informs employer that they have tested positive for COVID / Employee is symptomatic.</i></p>	<p>Yes.</p>	<p>If employee was exposed to COVID in the workplace → With pay, under Cal/OSHA ETS employee must be paid while out of work if they would otherwise be able to work and cannot work remotely; likely covered by WC.</p> <p>Unless the employee is too sick to work due to their COVID symptoms, then there is no pay obligation; employee may still be eligible for WC or SDI.</p> <p>If employee was exposed to COVID outside the workplace → Pay optional, based on employer’s policy; employee can elect to use FFCRA sick leave if provided by employer and available (up to 80 hours) or CA paid sick leave if available.</p> <p>Note: Employee may also qualify for unpaid leave under CFRA/FMLA if their symptoms rise to the level of a “serious health condition.”</p>	<p>Can return when the following criteria are met:</p> <ul style="list-style-type: none"> • At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications; • COVID-19 symptoms have improved; and • At least 10 days have passed since COVID-19 symptoms first appeared. <p><u>Under Cal/OSHA ETS:</u> If the employee was exposed in the workplace, employer cannot require a negative test to return to work. Just have to meet the criteria above.</p>	<p>Yes:</p> <ul style="list-style-type: none"> • Within 1 business day employer must provide written notice (<i>see attached template</i>) to ALL employees, contractors, and other employers that were at the same worksite* as the positive employee during the <i>high risk period</i>, which is the 48 hour period before the positive person first developed symptoms; and • Within 3 business days provide written notice to employer’s WC provider.** • If employee becomes seriously ill or dies in connection with employment, must report to Cal/OSHA within 8 hours. 	<p>Potentially, yes: Employer must identify all employees who were in close contact with the positive employee during the high risk period and exclude them from the workplace immediately.</p> <p>An employee had “close contact” if they were within 6 feet of the positive individual for a cumulative total of 15 minutes or more in any 24-hour period during the high risk period, regardless of the use of facial coverings.</p>	<p>Yes: Must offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential COVID-19 exposure in the workplace; testing does not have to be at the workplace but employees must be paid for the time to go get tested.</p> <p>Employees may decline to get tested; employer is just required to offer testing at no cost.</p>

COVID Scenarios	Exclude from the workplace?	With or Without Pay?	When can they return?	Notice required?	Exclude Others from the Workplace?	Testing Required?
<i>Employee had close contact with a positive case in the workplace during the high risk period.</i>	Yes.	With pay , under Cal/OSHA ETS employee must be paid while out of work if they would otherwise be able to work and cannot work remotely.	Can return to work after 10 days have passed since their last exposure to the positive individual.***	No – <u>BUT</u> if they test positive for COVID then follow the instructions above for providing the required notice.	No – <u>BUT</u> if the employee tests positive (with or without symptoms) follow the applicable instructions above to determine close contacts and exclude from the workplace.	Yes – Must offer COVID-19 testing at no cost to the employee who had close contact; testing does not have to be at the workplace but employee must be paid for the time to go get tested.
<i>Employee is exposed to a COVID positive case <u>outside</u> of work; informs employer of exposure.</i>	Yes.	Since employee was exposed to COVID outside the workplace → Pay optional , based on employer’s policy; employee may be able to use FFCRA sick leave if they qualify for emergency paid sick leave and it is offered by the employer (up to 80 hours).	If no symptoms develop and employee does not test positive, Cal/OSHA regulations does not cover this scenario. While not required, we recommend employee excluded until 10 days have passed from their <i>last exposure to the positive individual</i> (note that if they live with the positive individual this time may be extended).*** If the employee develops symptoms or tests positive, follow the return to work criteria above.	No – <u>BUT</u> if they test positive for COVID then follow the instructions above for providing the required notice.	No – <u>BUT</u> if the employee tests positive (with or without symptoms) follow the applicable instructions above to determine close contacts and exclude from the workplace.	No – <u>BUT</u> if the employee tests positive (with or without symptoms) testing will be required for all potentially exposed employees.

COVID Scenarios	Exclude from the workplace?	With or Without Pay?	When can they return?	Notice required?	Exclude Others from the Workplace?	Testing Required?
<i>Employee is subject to a quarantine or isolation order by a local or state health official.</i>	Yes.	<p>If employee was exposed to COVID in the workplace → With pay, under Cal/OSHA ETS employee must be paid while out of work if they would otherwise be able to work and cannot work remotely; likely covered by WC.</p> <p>If employee was exposed to COVID outside the workplace → Pay optional based on employer’s policy; employee can elect to use FFCRA sick leave if provided by employer and available (up to 80 hours) .</p>	Employee shall not return to work until the period of isolation or quarantine is completed or the order is lifted. If no period was specified, then the period shall be 10 days from the time the order to isolate was effective, or 14 days from the time the order to quarantine was effective.	<p>Yes:</p> <ul style="list-style-type: none"> Within 1 business day employer must provide written notice (<i>see attached template</i>) to ALL employees, contractors, and other employers that were at the same worksite* as the quarantined/ isolated employee during the <i>high risk period</i> – the high risk period is not specifically defined in this scenario, but it may be defined in the order. If the employee has tested positive or has symptoms follow the criteria above. 	<p>Potentially, yes: Employer must identify all employees who were in close contact with the positive employee during the high risk period and exclude them from the workplace immediately.</p> <p>An employee had “close contact” if they were within 6 feet of the positive individual for a cumulative total of 15 minutes or more in any 24-hour period during the high risk period, regardless of the use of facial coverings.</p>	<p>Yes: Must offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential COVID-19 exposure in the workplace; testing does not have to be at the workplace but employees must be paid for the time to go get tested.</p> <p>Employees may decline to get tested; employer is just required to offer testing at no cost.</p>
<i>Employer has 3 or more employees test positive for COVID in a 14-day period – an “outbreak.”</i>	Yes – all employees who test positive must be excluded from the workplace immediately.	<p>Determine for each case if (1) work related, and (2) asymptomatic or symptomatic then follow instructions above accordingly.</p> <p>Note: Once 4 employees or more test positive (or 4% if more than 100 employees),</p>	Determine for each case if asymptomatic or symptomatic then follow instructions above accordingly.	<p>Yes:</p> <ul style="list-style-type: none"> Within 48 hours, notify the local public health agency of the names, number, occupation, and worksite of all COVID cases; employer shall also report the business address and NAICS code of the 	<p>Potentially, yes: Employer must identify all employees who were in close contact with the positive employees during the high risk period and exclude them from the workplace immediately.</p> <p>An employee had “close</p>	Yes - Provide COVID-19 testing to all employees at the “exposed workplace”**** immediately upon discovering an outbreak, and then again one week later (does not apply to employees who were not at the workplace during

COVID Scenarios	Exclude from the workplace?	With or Without Pay?	When can they return?	Notice required?	Exclude Others from the Workplace?	Testing Required?
		the cases are all presumed to be work related for Worker's Comp purposes and will be covered by WC unless the employer can prove the employee was not exposed at work.		<p>worksite where the individuals work, and hospitality/fatality status. Continue to notify of any subsequent cases;</p> <ul style="list-style-type: none"> • Within 1 business day of each case the employer must provide written notice (<i>see attached template</i>) to ALL employees, contractors, and other employers that were at the same worksite* as the positive employees during the <i>high risk period</i> (see criteria above); and • Within 3 business days of each case provide written notice to employer's WC provider.** • If employee becomes seriously ill or dies in connection with employment, must report to Cal/OSHA within 8 hours. 	contact" if they were within 6 feet of the positive individual for a cumulative total of 15 minutes or more in any 24-hour period during the high risk period, regardless of the use of facial coverings.	<p>the period of an outbreak).</p> <p>After the first two tests, employers must provide continuous COVID-19 testing to all employees who remain at the exposed workplace at least once per week (or more frequently if recommended by the local health department) until there are no new COVID-19 cases detected in the workplace for a 14-day period.</p>

COVID Scenarios	Exclude from the workplace?	With or Without Pay?	When can they return?	Notice required?	Exclude Others from the Workplace?	Testing Required?
<p><i>Employer has 20 or more employees test positive for COVID in a 30-day period – a “major outbreak.”</i></p>	<p>Yes – all employees who test positive must be excluded from the workplace immediately.</p>	<p>Determine for each case if (1) work related, and (2) asymptomatic or symptomatic then follow instructions above accordingly.</p> <p>Note: Once 4 employees or more test positive (or 4% if more than 100 employees), the cases are all presumed to be work related for Worker’s Comp purposes and will be covered by WC unless the employer can prove the employee was not exposed at work.</p>	<p>Determine for each case if asymptomatic or symptomatic then follow instructions above accordingly.</p>	<p>Yes:</p> <ul style="list-style-type: none"> • Within 48 hours, notify the local public health agency of the names, number, occupation, and worksite of all COVID cases; employer shall also report the business address and NAICS code of the worksite where the individuals work, and hospitality/fatality status. Continue to notify of any subsequent cases; • Within 1 business day of each case the employer must provide written notice (<i>see attached template</i>) to ALL employees, contractors, and other employers that were at the same worksite* as the positive employees during the <i>high risk period</i> (see criteria above); and • Within 3 business days of each case provide written notice to 	<p>Potentially, yes: Employer must identify all employees who were in close contact with the positive employees during the high risk period and exclude them from the workplace immediately.</p> <p>An employee had “close contact” if they were within 6 feet of the positive individual for a cumulative total of 15 minutes or more in any 24-hour period during the high risk period, regardless of the use of facial coverings.</p> <p>Follow any local health department orders for excluding employees.</p> <p>Consider halting all or part of operations to prevent further spread.</p>	<p>YES - Provide testing twice a week (or more frequently if recommended by the local health department) to all employees present at the exposed workplace during the 30-day period and who remain at the workplace.</p>

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				<p>employer's WC provider.**</p> <ul style="list-style-type: none"> If employee becomes seriously ill or dies in connection with employment, must report to Cal/OSHA within 8 hours. 		
<i>Employee returns from voluntary out of state or international travel (not work related).</i>	<i>Maybe</i> - If required by the County to quarantine after travel then exclude from work; employer can also have policy requiring employees to quarantine after travel.	If the quarantine is required by the County or a health department order, see instructions above for employees subject to quarantine or isolation order. Otherwise, depends on employer's policy.	<p>If quarantine is required by the County or a health department order, see instructions for employee subject to a quarantine or isolation order.</p> <p>If employer policy – the current recommendation from the CDPH is a minimum 10-day quarantine, but an employer could require longer (i.e. 14 days).</p>	No	No	No
<i>Employer receives notice that a third party with COVID-19 was at a worksite.</i>	Employer likely does not have control over 3 rd party, but can ask them not to return to worksite until no longer contagious.	N/A	N/A	<p>Yes:</p> <ul style="list-style-type: none"> Within 1 business day employer must provide written notice (see attached template) to ALL employees, contractors, and other employers that were at the same worksite* as the positive 3rd party 	<p>Potentially, yes: Employer must identify all employees who were in close contact with the positive 3rd party during the high risk period and exclude them from the workplace immediately.</p> <p>An employee had "close</p>	<p>YES: Must offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential COVID-19 exposure in the workplace; testing does not have to be at the workplace but employees</p>

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	Employer should require any third parties (such as customers, delivery people etc.) wear masks and maintain social distancing.			<p>during the <i>high risk period</i>, which is the 48 hour period before the positive person first developed symptoms or tested positive for COVID-19; and</p> <ul style="list-style-type: none"> • Within 3 business days of each case provide written notice to employer's WC provider.** • If employee becomes seriously ill or dies in connection with employment, must report to Cal/OSHA within 8 hours. 	contact" if they were within 6 feet of the positive individual for a cumulative total of 15 minutes or more in any 24-hour period during the high risk period, regardless of the use of facial coverings.	<p>must be paid for the time to go get tested.</p> <p>Employees may decline to get tested; employer is just required to offer testing at no cost.</p>
<i>Employee informs employer that they are not comfortable coming to work due to concerns about COVID-19 (employee has not been exposed or tested positive).</i>	N/A	<p>If employee refuses to come to work, they can be put on an unpaid leave or potentially terminated (*discuss specific facts with legal counsel prior to termination).</p> <p>Accommodation only required if there is a medical/disability related reason why the employee cannot work.</p>	N/A	No	No	No

* The “worksites” means the building, store, facility, agricultural field or other location where a worker worked during the infectious period. It does not apply to buildings, floors or other locations of the employer that the positive individual did not enter. For example, if the employer has two warehouses and the positive employee only worked in Warehouse A, notice is only required to be given all employees and contractors in Warehouse A and no notice needs to be given to employees in Warehouse B.

**Required Notice to Worker’s Comp – Your provider may have their own form for reporting COVID cases in the workplace, but if not the employer should include the following information:

- That an employee tested positive without identifying information about the employee;
- The date of the test;
- The place(s) where the employee worked during the 14 days prior to the test; and
- The highest number of employees who reported to work at the employee’s workplace in the 45-day period before the last day the employee worked at each specific place of employment.
- NOTE: If you have evidence that the employee contracted COVID-19 *outside* the workplace, we recommend informing your carrier.

*** Quarantine/exclusion period may be longer pursuant to an order or recommendation from a local health officer with jurisdiction over the workplace.

**** The “exposed workplace” for purposes of an outbreak or major outbreak is a work location, working area or common area used or accessed by a COVID-19 case during the high-risk period, including bathrooms, walkways, hallways, aisles, break or eating areas and waiting areas. When determining which areas constitute a single “exposed workplace” for purposes of enforcing testing requirements, Cal/OSHA does not expect employers to treat areas where masked workers momentarily pass through the same space without interacting or congregating as an “exposed workplace,” so they may focus on locations where transmission is more likely.

Reminder: The DFEH prohibits firing workers based on actual or perceived COVID symptoms. Further, employers are required to take reasonable action to stop COVID-related harassment between employees. Employers may not terminate or otherwise retaliate against employees who are perceived to have a disability, or who report COVID-19 related harassment or discrimination.

SAMPLE COVID-19 WORKPLACE EXPOSURE NOTICE (AB 685)

Date: [Within one business day of notice that potential exposure occurred]

To: Employees, Employers of subcontracted employees, and Employee unions (if applicable) [to be sent to those who were on the premises at the same worksite as the COVID-19 positive or exposed individual during the infectious period]

Re: NOTICE OF POTENTIAL EXPOSURE TO COVID-19

We have learned that an employee [tested positive for COVID-19 / was placed under a COVID-19 related order to isolate / was exposed to a person with COVID-19 in the workplace]. Employees working at [worksite(s)] may have been exposed to COVID-19 between [date range of potential exposure].

If you are having symptoms or believe you may have contracted COVID-19 illness, please inform [name & contact information in HR or management] and contact your health care provider. [Company name] will maintain the confidentiality for all medical information unless disclosure is required by law.

All employees who had potential COVID-19 exposure in the workplace will be offered COVID-19 testing at no cost to the employee. [Human Resources or Company representative] will provide employees with details on how and where to get tested. The time spent getting tested for COVID-19 will be paid.

[Company name] is implementing the following measures to maintain safety of our employees during this time:

[Describe the company's disinfection and safety plan, following guidelines of CDC.]

We want to remind you of the following COVID-19-related benefits:

- Workers' compensation may apply to you [include information for filing a claim]
- [COVID-19-related leaves, if any applicable (note, current mandated COVID-19 leave laws expire 12/31/2020)]
- [Company sick leave policy]
- [Company] does not retaliate or discriminate against any employee as a result of COVID-19 exposure

For more information on COVID-19, including symptoms and treatment, visit the CDC website at www.cdc.gov and the California Department of Public Health at <https://www.cdph.ca.gov/>.