

TEMPERATURE MONITORING AND RETURN TO WORK PROTOCOLS IN THE HEALTHCARE (NON-TELEHEALTH) SETTING AFTER A COVID-19 EXPOSURE OR INFECTION

Hodgson Russ Healthcare & OSHA Alert
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In a March 28, 2020 publication, the New York State Department of Health issued a guidance document entitled: “Health Advisory: Updated Protocols for Personnel in Healthcare and Other Direct Care Settings to Return to Work Following COVID-19 Exposure or Infection.” The updated guidance has broad application to healthcare workers beyond hospitals. It applies in “All Healthcare Settings, including but not limited to Hospitals, Long Term Care Facilities (LTCFs), Adult Care Facilities (ACFs), End Stage Renal Disease (ESRD) Facilities, Emergency Medical Services (EMS), Home Care, Outpatient Clinics, and Private Practice that is unable to deliver a service through telehealth and is required to maintain operations.” The guidance describes the procedures and circumstances for permitting healthcare personnel to return to work following exposure to a confirmed COVID-19 case, international travel, or confirmed or suspected COVID-19 infection. According to the guidance:

Entities may allow healthcare personnel (HCP) who have **been exposed to a confirmed case of COVID-19**, or who have traveled internationally in the past 14 days, whether healthcare providers or other facility staff, to work if all of the following conditions are met:

1. Furloughing such HCP would result in staff shortages that would adversely impact operation of the healthcare entity.
2. HCP who have been contacts to confirmed or suspected cases are **asymptomatic**.
3. HCP who are asymptomatic contacts of confirmed or suspected cases should self-monitor twice a day (i.e. temperature, symptoms), and undergo temperature monitoring and symptom checks at the beginning of each shift, and at least every 12 hours during a shift.
4. HCP who are asymptomatic contacts of confirmed or suspected cases should wear a facemask while working, until 14 days after the last high-risk exposure.
5. To the extent possible, HCP working under these conditions should preferentially be assigned to patients at lower risk for severe complications (e.g.

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on units established for patients with confirmed COVID-19), as opposed to higher-risk patients (e.g. severely immunocompromised, elderly). As this outbreak grows, all staff will need to be assigned to treat all patients regardless of risk level.

6. HCP allowed to return to work under these conditions should maintain self-quarantine when not at work.
7. If the HCP who are asymptomatic contacts and working under these conditions develop symptoms consistent with COVID-19, they should immediately stop work and isolate at home. Testing should be prioritized for hospitalized health care workers. All staff with symptoms consistent with COVID-19 should be managed as if they have this infection regardless of the availability of test results.

Entities may allow healthcare personnel (HCP) with **confirmed or suspected COVID-19**, whether healthcare providers or other facility staff, to work if all of the following conditions are met:

1. Furloughing such HCP would result in staff shortages that would adversely impact operation of the healthcare entity.
2. HCP with confirmed or suspected COVID-19 must have maintained isolation for at least 7 days after illness onset, must have been fever-free for at least 72 hours without the use of fever reducing medications, and must have other symptoms improving.
3. If HCP is asymptomatic but tested and found to be positive, they must maintain isolation for at least 7 days after the date of the positive test and, if they develop symptoms during that time, they must maintain isolation for at least 7 days after illness onset and must have been at least 72 hours fever-free without fever reducing medications and with other symptoms improving.
4. Staff who are recovering from COVID-19 should wear a facemask while working until 14 days after onset of illness, if mild symptoms persist but are improving.
5. To the extent possible, staff working under these conditions should preferentially be assigned to patients at lower risk for severe complications (e.g. on units established for patients with confirmed COVID-19), as opposed to higher-risk patients (e.g. severely immunocompromised, elderly). As this pandemic grows, all staff will need to be assigned to treat all patients regardless of risk level.
6. HCP allowed to return to work under these conditions should maintain self-isolation when not at work.

HCP who are furloughed due to isolation, or because they do not meet the above conditions for returning to work, qualify for paid sick leave benefits and their employers can provide them with a letter confirming this, which can be used to demonstrate eligibility for the benefit.

Healthcare employers should bear in mind, however, that employers who engage in temperature monitoring and symptom checks of their employees need to ensure that they do so in accordance with other applicable laws. The Center for Disease Controls and the Equal Employment Opportunity Commission have also issued guidance with respect to testing and sending employees home in suspect exposure cases. The United States Department of Labor also issued guidance relative to the employer's obligations when an employer requires an employee to go home or stay home based on COVID-19 symptoms

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or exposures.

We recommend that employers develop a policy and set of procedures for any temperature testing. In doing so, employers should be mindful of continuing obligations in other contexts, such as: obligations that exist under the Americans with Disabilities Act, including privacy and security over employee medical information and limitations as to disability inquiries and medical examinations; OSHA and safety implications to workers, including appropriate personal protective equipment, training, protocols for disinfecting equipment and disposal of COVID-19 contaminated materials; obligations that may exist under collective bargaining agreements or employment contracts; and requirements under other employment-related laws and regulations that may be applicable to your place of employment.

Please contact Jason Markel (716.848.1395) if you have further questions about temperature monitoring or the OSHA or other legal implications of your COVID-19 response. For information about telehealth, please contact Jane Bello Burke (518.433.2404).

See our related Alert regarding return to work guidance for essential business employees in the non-healthcare setting.

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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