

COVID-19 Cases Are Rising Again: What Employers Should Know

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The significant increase in COVID-19 cases nationwide has state and local governments implementing safety measures. In some instances, state and local governments are reinstating restrictions that were in place at the beginning of the pandemic. While it is easy to get lost in the ever-shifting morass of federal, state, and local restrictions and guidance related to COVID-19, employers would be well served to remember a few key points.

Stay Updated on CDC and Local Guidance and Restrictions

As more becomes known about COVID-19, the Center for Disease Control and Prevention (CDC) is regularly updating its guidance. For instance, the CDC updated its guidance on when employees can discontinue quarantine that provides different periods for employees who have been exposed to COVID-19 and those who have tested positive. Understanding the CDC's guidance remains key to preventing potential outbreaks of COVID-19 among employees and staving off investigations of workplaces by public health officials.

Additionally, public health restrictions issued in Illinois and other states over the last few weeks serve as a stark reminder that COVID-19 remains at the forefront of the issues facing employers. As a result of the record highs in COVID-19 positivity rates, Illinois has issued Tier 3 Resurgence Mitigations that took effect on November 20, 2020. Under the Tier 3 Resurgence Mitigations, most retail and personal care businesses must operate at no more than 25% capacity except for pharmacies and grocery stores, which

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may operate at up to 50% capacity. The Tier 3 Resurgence Mitigations also prohibit indoor dining at restaurants and bars, impose additional restrictions on outdoor dining, and limit all gatherings to 10 people or fewer. For contact tracing purposes, all parties who dine at a restaurant must have a reservation (even if made on site) and attendance lists must be kept for all meetings and social events. In addition, the orders encourage remote work for as many workers as possible. Manufacturing sector employers in Illinois must retrain employees on COVID-19 mitigation requirements. This should be done immediately. Illinois employers should expect additional mitigation measures if the positivity rates continue to rise. Contact your Laner Muchin servicing attorney for assistance on compliance with these new measures.

The City of Chicago recently modified its Emergency Travel Order to implement a three-tiered color coded system. Under the new system, states are identified as red, orange or yellow. Employees who travel to “red” states must quarantine for 14 days. As of November 17, 2020, there are 11 “red” states, including Indiana, Iowa, Wisconsin, Kansas, and Minnesota. As of November 17, 2020, there are 37 “orange” states and territories, including Arizona, Florida, Michigan, New York, Missouri, Ohio and Pennsylvania. Employees who travel to an orange state must quarantine for 14 days *or* obtain a negative COVID-19 test not more than 72 hours before arriving to Chicago, and strictly adhere to masking and social distancing requirements and avoid in-person gatherings upon return. Only two states, Maine and Vermont, are yellow and do not require a quarantine or negative pre-arrival COVID-19 test. Cook County has abandoned its “quarantine list” altogether and has recently issued a more blanket guidance recommending persons avoid non-essential travel. The guidance broadly provides that persons entering suburban Cook County from outside of suburban Cook County should quarantine for 14 days. This is only guidance and not a requirement. The City of Chicago updates its Emergency Travel Order every Tuesday to go into effect the following Friday.

As another example, New York has long required out-of-state visitors to quarantine for 14 days (subject to certain exceptions). Effective November 4, 2020, persons traveling outside of New York can end the 14-day quarantine early if they obtain a negative COVID-19 test within three days of their return to New York, quarantine for three days and obtain another negative COVID-19 test result on the fourth day.

As demonstrated by these most recent Illinois Executive Orders and ongoing quarantine orders, state and local government responses to COVID-19 remain in flux. Moreover, the approach to reopening and the appropriate level of public health restrictions varies widely among states, with some moving forward with reopening, some pausing, and some reversing course.

For more information about state-specific responses to COVID-19, our Comprehensive Collection of State COVID-19 Guidance for Employers provides a useful initial resource. This Guidance is regularly updated on our website.

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Remember Federal Paid Leave Laws

With closures, quarantine orders and rising COVID-19 cases, employers should not forget that employees may be eligible for paid leave under federal and state laws and an employer's own policies. Employers with less than 500 employees may be required to provide paid sick leave (PSL) and/or expanded FMLA under the Families First Coronavirus Response Act (FFCRA). Our summary of the FFCRA and the corresponding regulations can be found here along with a recent update. Currently, the FFCRA expires on December 31, 2020.

Employees who have used PSL and/or expanded FMLA earlier this year can still use any remaining balance of unused leave. However, employees may not use PSL for all COVID-19-related absences. For example, an employee cannot use PSL if the employee *chooses* to stay home because: (1) they have symptoms of COVID-19 or (2) they have been exposed to someone with COVID-19 (provided there is no order by a government or public health official to quarantine or they have not been advised by a health care provider to stay home), or if an employer will not allow an employee to work for those reasons.

Do Not Forget About State and Local Paid Sick Leave Laws

Chicago's quarantine order and Cook County's non-mandatory quarantine guidance present some interesting questions. Employees who are subject to Chicago's quarantine order who cannot telecommute are eligible for PSL. Another consideration is expanded FMLA. Now that some schools are open for in-person classes, employees may be eligible for expanded FMLA if a school (or other place of childcare) is closed or returns to e-learning due to COVID-19. Eligible employees can use also paid sick leave under Chicago and/or Cook County's Paid Sick Leave Ordinances if the employee or a family member is ill, or if a business, school or other place of care is closed for COVID-19 reasons.

Other states and local governments have enacted their own COVID-19-related leave laws. For instance, California and Colorado have passed supplemental paid sick leave laws that require employers with greater than 500 employees to provide paid sick leave for certain COVID-19-related absences that largely parallel the reasons for leave under federal FFCRA. Unlike FFCRA, however, California's and Colorado's supplemental paid sick leave laws do not provide an exemption for health care providers. In New York, employees can take leave when they are subject to a mandatory or precautionary order of quarantine or isolation by a governmental entity. The amount of leave in New York depends on the size of the employer. Although states like Arizona, Connecticut and Michigan, have not enacted new laws, those states have clarified that leave under existing paid sick leave laws can be used for certain COVID-19-related reasons.

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As COVID-19 cases are on the rise, employers must maintain a proactive response by staying on top of the most recent developments and the impact of any developments on their workplace. While shifting guidance means shifting risk points, Laner Muchin is committed to supporting employers through these uncertain times.