

PUERTO RICO COVID-19 UPDATE

NEW PR HEALTH DEPARTMENT GUIDANCE FOR EMPLOYEES RETURNING TO WORK AFTER COVID-19 DIAGNOSIS OR SUSPICION

August 24, 2020

On August 20, 2020, the Puerto Rico Department of Health issued a “Preliminary Guidance on the Criteria that All Employers must Consider upon the Return of an Employee With COVID-19, Suspicious or Confirmed” in conformity with the COVID-19 protective measures established under Executive Order 2020-60.

The Preliminary Guidance has the intention of providing information to employers on the requirements an employee must meet to return to work after being diagnosed with COVID-19 or being suspected of contracting the virus. A summary of the most important aspects of this Preliminary Guidance follows.

Employer Reporting Requirement

The Department of Health finally provides the reporting procedure for positive confirmed or suspected workplace COVID-19 cases. This requirement has existed since the issuance of Executive Order 2020-60 on July 31, 2020. However, a formal reporting procedure had not been established.

According to this Preliminary Guidance, employers must complete a form titled “Form for individuals exhibiting signs and/or symptoms of COVID-19 or positive cases of COVID-19 in the workplace” (“Formulario para personas que muestran señales y/o síntomas de COVID-19 o casos positivos a COVID-19 en lugares de trabajo”). The form was not available at the Department of Health website (salud.gov.pr) when this newsletter was drafted. Once completed, the form must be sent by e-mail to: covidpatronos@salud.pr.gov.

Guidelines for Returning to Work after Quarantine

Employees who exhibited COVID-19 symptoms and were ordered to quarantine may end their isolation when all of the following requirements are met: 10 days after the onset of the COVID-19 symptoms; and 24 hours since last fever without the use of fever-reducing medications; and the employee shows improvement of other COVID-19 symptoms such as coughing and difficulty breathing.

Employees whose COVID-19 diagnosis was confirmed by a molecular test but were asymptomatic may end their quarantine and return to work 10 days after their first positive COVID-19 molecular test. However, if the employee develops symptoms after the positive result, they may only return to work when the requirements listed above for employees who exhibit COVID-19 symptoms are met.

It is important to note that this Preliminary Guidance is inconsistent with Executive Order 2020-61 and other executive orders before it that require that any individual diagnosed or suspected of having COVID-19 be

quarantined for fourteen (14) days. Thus, sick employees must be isolated and quarantined in their homes for at least 14 days, as provided in the Executive Order. Further, the Preliminary Guidance does not include the CDC's guidance of isolating patients with severe illness for up to 20 days after symptom onset.

Return to Work Requirements

Citing CDC Guidelines, the Preliminary Guidance provides that, even though the Americans with Disabilities Act ("ADA") authorizes employers to require medical certificates to its employees to certify that they are healthy and in conditions to return to work, employers should not ask sick employees to produce a negative COVID-19 test result or a return-to-work certificate from a healthcare provider to justify their absence, as a condition to return to work, or to determine medical leave eligibility. The reasoning behind this is that medical offices may be overcrowded and may not be in conditions to issue this documentation in a timely manner.

However, note that in some instances the Families First Coronavirus Response Act ("FFCRA") and the federal Department of Labor's FFCRA Guidelines authorize employers to require medical certifications to determine eligibility to some FFCRA leaves. For instance, if an employee is taking leave beyond the two (2) weeks of Emergency Paid Sick Leave because his medical condition for COVID-19-related reasons rises to the level of a serious health condition, the employee is required to provide medical certifications under the FMLA, if required by the employer. Further, Puerto Rico Act 180-1997, which regulates the accrual, use and payment of vacation and sick leave for non-exempt employees, allows employers to require a medical certificate to determine eligibility for sick time and to excuse the absence when the employee has been absent due to illness for more than two (2) days.

We will continue updating this information as it becomes available.

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For any questions or inquiries regarding this topic do not hesitate to contact us at info@oneillborges.com or your prime contact attorney at O'Neill & Borges LLC. Please refer to www.oneillborges.com.

Because of the general nature and informative purpose of this newsletter, nothing herein should be considered as legal advice or a legal opinion. For further information about the contents of this newsletter, or should you need further assistance in connection with these matters, please contact any of the attorneys of the firm's Labor & Employment Practice Group.



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