

April 16, 2020

If an employee tests positive for COVID-19, employers should consider taking steps to ensure the employee is cared for and ensure the safety of others. Treat positive test results and “suspected but unconfirmed” cases of COVID-19 the same. If the source of infection is known, identify if it was at the workplace or outside.

If the infection was contracted inside the workplace, it is strongly advised that the business take the following steps:

- Notify your workers' compensation carrier;
- Place the employee on workers' compensation leave (with pay); and
- Record the infection in the employer's OSHA 300 log.

If the infection was contracted outside the workplace there are several things to consider and implement to protect the company. If the employee is eligible for paid leave under the Families First Coronavirus Response Act (FFCRA) , place them on paid FFCRA leave and apply for an FFCRA payroll tax credit. While the employee should already be aware due to the FFCRA poster requirements, inform the employee that they may use this type of leave.

If your company offers short term disability, determine if and when employee is eligible. Additionally, the company should ask the employee if they grant the company permission to disclose the fact that the employee is infected.

If the employee consents to disclosing the fact they are infected, get the consent in writing. Then, the company should notify employee's manager(s) or supervisor(s) that employee is infected with COVID-19 and is out on leave. For everyone else, respond to inquiries by disclosing employee is on a leave of absence for non-disciplinary purposes.

If an employee denies consent to disclose the fact that they are infected, notify employee's manager(s) or supervisor(s) only that employee is on a leave of absence for non-disciplinary purposes.

Regardless of if the employee gives their consent to disclose the fact they are infected, the company must comply with any required notifications to OSHA or the MN Department of Health.

The company should also notify the employee's co-workers who may have come into close contact with the infected employee at work within the past 14 days. Co-workers

should be told that they may have been exposed to COVID-19 and may wish to see a healthcare provider. For employees who had very close contact with employee in past 14 days, send them home for a 14-day self-quarantine. In most cases, these employees will also be eligible for paid leave under the FFCRA.

If your company has more than one store or office location, the company is not required to notify other locations unless the employee visited those sites within past 14 days.

DO NOT identify the infected employee by name. To the extent reasonably possible, avoid making any direct or indirect references that would lead the co-workers to guess the identity of the employee. In many small businesses other employees may infer who the employee is, but that does not mean you shouldn't do what you can to avoid having others find out about the employee's private health information.

The company should also notify known customers, vendors, or third parties with whom the employee may have come into contact with through work (including customers who had direct close contact with the employee at a job site) within the past 14 days that they may have been exposed to COVID-19 and may wish to see a healthcare provider. **Again, DO NOT identify the infected employee by name.** To the extent reasonably possible, avoid making any direct or indirect references that would lead the person to guess the identity of the employee. Again, we know this is hard to do in a small company, but try.

There is no guidance on how far a company should investigate for third parties who may have come into contact with an employee through work. It is safe to include any parties on the employee's work calendar, co-workers who have had close contact, or other people readily available or known.

The employer should arrange for a deep and thorough cleaning of the employee's workspace if they have one. Other tools, equipment, and vehicles used by the employee should also be cleaned.

Employers should respond to inquiries by CDC or public health authorities if they are received. In this instance, the employer is allowed to disclose the identity of the employee and protected health information.

There is no obligation to report a suspected or confirmed case of COVID-19 to the CDC. (The employee's healthcare provider has that reporting requirement.) Finally, having worked in the green industry for more than 25 combined years, we get it. Sending home every employee who had close-contact with a COVID-19 positive employee, may significantly reduce the company's workforce and will impact the bottom line even more than it already has been. The company has to make some very hard decisions. If the business can continue to operate and enforce extreme social distancing measures, then it is up to the business owner to decide. If many or all employees of the business likely came into contact with the employee who tested positive, it may be best to shut the business down to the extent possible for a minimum of 2 weeks. While this

sounds extreme, the alternative is that additional employees will actually contract COVID-19 and the spread of the virus within your company will require you to shut down even if you don't want to.

Don't hesitate to reach out to Patrick McGuiness at pmcguiness@zmattorneys.com with any questions you have during this crisis.