

**MPCC Roundtable
June 30, 2020 TPO Update**



For questions or additional information regarding the below update, please contact Michaelle Stanford, PHR-ca, M.A. at michaelles@tpohr.com. **TPO Note:** As a reminder, these updates are provided for informational purposes only. For unique situations to your business, please consult with your Human Resource provider or employment expert.

Continuing the Story: My business has an outbreak,,,,, what do I do?

- 1) **Your business continues to remain open. What if you have a COVID-19 Outbreak?** The California Department of Public Health has published a checklist for employers experiencing an outbreak of COVID-19 in their workplace. Topics include notifying the local Public Health Department (LHD), Cal-OSHA reporting requirements, identifying additional employee cases and close contact to prevent further spread, notification and management of employees and determining when it is appropriate to bring employees back to work. <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Workplace-Outbreak-Employer-Guidance.aspx>

When testing all employees is not available or not recommended by the LHD, consider alternative methods for controlling the outbreak, in consultation with the LHD, including but not limited to tracing all close contacts of confirmed cases and instructing those individuals to quarantine or temporarily closing the workplace and quarantining all employees.

Conduct contact tracing and quarantining of close contacts of confirmed cases in the workplace.

- *Employer should provide information to the LHD on the confirmed COVID-19 case employees in the workplace, including job titles, work areas, close contacts in the workplace, dates of symptom onset, and shifts worked while infectious.*
- *Establish if the employer, LHD, or both will conduct interviews of the cases to determine their close contacts.*
- *Close contacts should be instructed to quarantine at home for 14 days from their last known contact with the employee with COVID-19. Close contacts should be tested for COVID-19 when possible.*
- *A close contact is someone who spent 15 minutes or more within 6 feet of an individual with COVID-19 infection during their infectious period, which includes, at a minimum, the 48 hours before the individual developed symptoms.*
- *Interview employees with laboratory-confirmed COVID-19 by phone to determine when their symptoms began, the shifts they worked during their infectious period, and to identify other employees with whom they had close contact during their infectious period.*
- *Use employment records to verify shifts worked during the infectious period and other employees who may have worked closely with them during that time period.*
- *While at home, close contacts should self-monitor daily for COVID-19 symptoms (e.g., fever, chills, shaking chills, cough, difficulty breathing, sore throat, congestion or runny nose, fatigue, body or muscle aches, loss of taste or smell, nausea or vomiting, diarrhea, loss of appetite).*

- 2) **How do you or your employees know if they are eligible for Emergency Paid Sick Leave (EPSL)?** The Department of Labor has posted a tool for employees to determine their eligibility for EPSL or Expanded Paid Family Leave (EFMLA). Although a tool for employers is not available, continue to access the for when it is released to help understand your obligations as an employer in providing these leave benefits. <https://www.dol.gov/agencies/whd/ffcr/benefits-eligibility-webtool>

- 3) ***In response to today's question I manage a physical fitness center. What can I do if a guest or patron refuses to wear a mask stating they have a medical reason?*** Per the Order of the Health Officer of Monterey County, a "Face Covering is also not required by this Order to be worn by an individual if the person can show either: 1) a medical professional has advised that wearing a Face Covering may pose a risk to the person wearing the mask for health-related reasons; for 2) wearing a Face Covering would create a risk to the person related to their work as determined by local, state, or federal regulators or workplace safety guidelines. A Face Covering should also not be used by anyone who has trouble breathing or is unconscious, incapacitated or otherwise unable to remove the Face Covering without assistance. It is suggested that you refer to and communicate the rules of entering and using your facility on your Website and points of entry.
<https://www.co.monterey.ca.us/home/showdocument?id=90136>
- 4) ***In response to today's question ... As an employer, can I require employee testing?*** Per the EEOC, employers may administer a COVID-19 test before permitting employees to enter the workplace. Below is an excerpt from EEOC's Q&A. Please visit their website for more information.
<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

A.6. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace? (4/23/20)

The ADA requires that any mandatory medical test of employees be "job related and consistent with business necessity." Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if [employees entering the workplace have COVID-19](#) because [an individual with the virus will pose a direct threat](#) to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

Consistent with the ADA standard, employers should ensure that the tests are accurate and reliable. For example, employers may review [guidance](#) from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities, and check for updates. Employers may wish to consider the incidence of false-positives or false-negatives associated with a particular test. Finally, note that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

Based on guidance from medical and public health authorities, employers should still require – to the greatest extent possible – that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.