

Blog Post

Employers Take Heed: CDC Modifies Return to Work Guidance

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Over the past few weeks, the CDC has issued updated COVID-19 guidance on a number of topics affecting the workplace, including modifying the criteria employers rely on to determine when an employee with COVID-19 may return to work. As the CDC's COVID-19 guidance evolves, employers must ensure their COVID-19 plans and policies likewise evolve. Given these recent changes, employers should take immediate steps to modify their COVID-19 plans and policies accordingly. Depending on the location, businesses can face fines or be forced to close down for failing to follow the most recent CDC guidance.

The most significant changes in the CDC guidance were to the criteria used in the “symptom-based” strategy for discontinuing isolation and precautions for individuals with COVID-19 (both in the healthcare and non-healthcare setting), and the circumstances under which the “test-based” strategy for discontinuing isolation is recommended.

Changes in Recommendations for Use of Testing

The CDC's earlier guidance had described five different populations for which COVID-19 viral testing would be appropriate:

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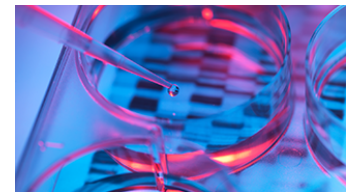
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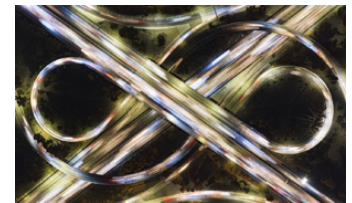
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1. Individuals with signs or symptoms consistent with COVID-19;
2. Asymptomatic individuals with recent known or suspected exposure to SARS-CoV-2 to control transmission;
3. Asymptomatic individuals without known or suspected exposure to SARS-CoV-2 for early identification and special settings;
4. Individuals being tested to determine resolution of infection; and
5. Individuals being tested for purposes of public health surveillance for SARS-CoV-2.



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However, the CDC has changed course and no longer recommends employers to use these viral tests to “determine resolution of infection” (item 4 above) — in other words, when an employee can safely to return to work. This includes employers in the healthcare setting. In prior guidance, the CDC stated that employers should use either a symptom-based, time-based, or test-based strategy in “consultation with healthcare providers and public health official.”

Now the CDC articulates a preference for using symptom-based strategy in determining when employees can return to work. The CDC explains that this change was because the test-based strategy has caused prolonged isolation of employees, including healthcare personnel, who may no longer be infectious but still “shed detectable SARS-CoV-2 RNA.” However, the CDC reports that “[p]rolonged viral shedding has been demonstrated without direct evidence for virus capable of replicating or causing infection.” To allow for a quicker return of likely non-infectious employees, including healthcare personnel, the CDC recommends the use of viral testing only if it works to discontinue self-isolation earlier than the symptom-based strategy, or when dealing with severely ill or immunocompromised employees.

Changes in Criteria for Return to Work in the Non-Healthcare Setting

As of July 20, 2020, the CDC also modified the symptom-based criteria set forth in its guidance for Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings. Now, the CDC recommends that individuals with COVID-19 remain in home isolation until:

- At least **10 days*** have passed since the onset of symptoms; and
- At least **24 hours** have passed since the resolution of the last fever without the use of fever-reducing medications; and
- **Other symptoms** have improved.

Prior to this recent change, the CDC's symptom-based criteria had required that at least 72 hours (not 24 hours) pass from the moment an individual's fever resolved (without the use of medication). The CDC also previously required that **respiratory** symptoms improve. However, the CDC removed the word "respiratory" from this requirement to "address [the] expanding list of symptoms associated with COVID-19."

*Although the CDC still recommends a 10-day period lapse from symptom onset (or first positive COVID-19 test for asymptomatic individuals) before returning to work, **the CDC has added a caveat**. The updated guidance now takes into consideration studies indicating that some individuals with severe to critical illness or who are severely immunocompromised may continue to produce replication-competent virus between 10 and 20 days after symptom onset. Specifically, the CDC now advises employers to consider, in consultation with infection control experts, extending the isolation period **for up to 20 days after symptom onset for individuals with severe to critical illness or who are severely immunocompromised**.

The CDC currently has provided no guidance regarding how employers should evaluate the gravity of an employee's illness or whether the employee is severely immunocompromised. As a result, employers should evaluate whether to require all employees with COVID-19 to provide a doctor's note certifying fitness for duty prior to returning to work.

Employers may recall that the CDC's earlier guidance also recommended that individuals can discontinue isolation through a "test-based" strategy; specifically, upon receiving two consecutive laboratory-confirmed negative viral COVID-19 test results from respiratory specimens collected at least 24 hours apart. This recommendation has also changed. Now, as previously noted, the CDC does **not** recommend using a test-based strategy except under the following circumstances:

- To discontinue isolation of individuals who are severely immunocompromised (in consultation with infectious disease experts); or
- To discontinue isolation (or other precautions) **earlier** than would occur using a **symptom-based strategy**.

As explained in a Decision Memo, the CDC's rationale for its recommendation to rely on symptom-based strategy rather than the testing-based strategy for ending isolation is based on the absence of any studies finding evidence that clinically recovered individuals with persistently detectable SARS-CoV-2 RNA (i.e., prolonged viral shedding) have transmitted the virus to others.

Of course, using the test-based strategy depends on availability of testing. Further, the test-based strategy may be an impractical option for employers, given the recent reports of delays in COVID-19 test results. By the time employees receive test results, the symptom-based strategy may apply to return employees to the workplace.

Changes in Criteria for Return to Work in the Healthcare Setting

The CDC similarly modified the Criteria for Return to Work for Healthcare Personnel (HCP) with SARS-CoV-2 Infection. Again, the CDC no longer recommends using the test-based strategy, except in “rare situations.” Further, the updated guidance modified the symptom-based criteria for return to work for a Health Care Professional with COVID-19 by:

- Reducing the time frame in which a Health Care Professional has to be fever-free (without use of fever-reducing medication) from at least 72 hours to **at least 24 hours**;
- Requiring **improvement in symptoms generally** rather than specifically respiratory symptoms; and
- Increasing the duration of isolation for a Health Care Professional with severe to critical illness or who is severely immunocompromised to **at least 20 days** since symptoms first appeared or, for an asymptomatic health care professional, their first positive COVID-19 test.

For a health care professional infected with COVID-19 who *is not severely immunocompromised* and either had mild to moderate illness or was asymptomatic, the duration of isolation continues to be at least 10 days since their symptoms first appeared or, for an asymptomatic health care professional, their first positive COVID-19 test.

So when is utilizing the test-based strategy for a health care professional with COVID-19 recommended? The CDC’s updated guidance provides that a test-based strategy could be considered:

- For a health care professional who is severely immunocompromised if, in consultation with infectious diseases experts, concerns exist that

the health care professional could continue to be infectious beyond 20 days; or

- In situations where discontinuation of isolation or other precautions earlier than would occur under the symptom-based strategy is necessary to allow the health care professional to return to work.

Newly Identified Ways in Which the Virus May Spread

In addition to updating guidance regarding discontinuing isolation of individuals with COVID-19, the CDC has specified other ways in which the virus may spread. At the outset of the COVID-19 pandemic, the CDC informed the public that “person-to-person” spread of COVID 19 was thought to occur mainly via respiratory droplets produced when an infected person **coughs or sneezes**.

However, the CDC’s guidance on How COVID-19 Spreads now states an infected person may also spread COVID-19 through **talking or raising their voice, such as shouting, chanting, or singing**. For this reason, the CDC continues to recommend that people wear cloth face coverings in public settings, especially when social distancing measures are not possible or difficult to maintain.

As reflected in the past several months, CDC guidance affecting employers undoubtedly will continue to evolve. Employers should expect additional changes from the CDC as further data and studies concerning COVID-19 become available. Employers who have not done so already, should designate an individual or team to check for daily updates to COVID-19 guidance by the CDC, OSHA, as well as other federal, state, and local agencies and authorities.

To keep up with their general duty under OSHA to provide a safe and healthy workplace, employers are well-advised to take immediate action to develop and/or update their COVID-19 plans and policies consistent with the latest CDC guidance. Akerman has updated documents available in the Return to

Work Resource Guide in accordance with the latest guidance. For assistance with drafting or updating COVID-19 plans and policies, please contact your Akerman lawyer.

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