

## **AN EMPLOYER'S GUIDE TO COVID-19**

The Syracuse Builders Exchange has been receiving inquiries from members regarding: (1) how to safeguard their employees relative to the COVID-19 outbreak, (2) when potentially exposed employees can return to work, (3) what benefits are available to employees out on leave, and (4) if employees can refuse to work for fear of contracting the virus. We will attempt to answer those questions and others; however, since the issues and knowledge of the virus is ever changing, we suggest that you regularly check the CDC and OSHA guidelines, and consultant legal counsel when specific issues arise.

### **Protecting your employees amidst COVID-19 outbreaks**

In an attempt to summarize some of that guidance and provide additional direction, we advise that employers ask an employee reporting for work the following questions:

1. Have you tested positive for COVID-19 or experienced any of the following within the previous 14 days: Fever, dry cough, shortness of breath, loss of taste or smell.
2. Do you live with or have you been in close contact (i.e., within 6 ft) with a person displaying symptoms of COVID-19 or someone who has tested positive for COVID-19 within the previous 14 days.
3. Are you required by the NYS DOH to be under mandatory or precautionary order of self-quarantine?
4. Have you traveled in the last 14 days to a country identified in a CDC level 2, 3, or 4 Travel Health Notice or to an area of outbreak, such as NYC?
5. Have you been in close contact with a person who has traveled in the last 14 days to a country identified in a Level 3 or 4 CDC Travel Health Notice or to an area of known outbreak, like NYC?
6. Do you have a compromised immune system, underlying medical condition and/or 70 or older?

The answers to the above questions will dictate what you, as the employer, can do next. If an employee answered "yes" to any of the above questions, then that employee should immediately be sent home. The employee ought to be told to contact his/her doctor and the local health department. If the employee answered "yes" to any of the first five questions you must ask the employee to identify all individuals who worked in close proximity (i.e., less than six feet) of them in the previous 14 days. Getting that list from the employee will ensure you have a full list of those who should be sent home and what job sites that employee has worked on in the last 14 days.

You must now take action with respect to the employees on the above list. All employees who have worked closely with an employee who answered yes to number 1 above (i.e., who has tested positive or shows symptoms of COVID-19) should also be sent home for 14

days. When sending the employees home, DO NOT identify the infected employee or you could risk a violation of confidentiality laws; however, employees who have had contact with an employee who answered “yes” to numbers 2-5 above do not need to be sent home UNLESS the employee who answered “yes” to numbers 2-5 shows symptoms of COVID-19 or tests positive.

Employers who have an employee who said “yes” to any of the first five questions must disinfect “high touch” areas such as tools, equipment, handles, doorknobs, elevator buttons, bathroom stall doors, faucets, handrails, swipe areas, keypads, etc. consistent with guidance issued by the NYS Department of Health, OSHA and the CDC.

### **When can an employee who had symptoms or a positive test report back to work?**

The CDC is discouraging an employer from requiring a negative test result from an employee before allowing them to return to work, as doing so would only strain the health care system. Instead, the CDC has offered some guidance. Per the CDC, there are three options for determining when a person may end home isolation, using either (1) a time-since-illness-onset option, (2) a time-since-recovery option, or (3) a test-based option.

1. *Time-since-illness-onset and time-since-recovery strategy:* Persons with COVID-19 symptoms who were directed to care for themselves at home may discontinue home isolation under the following conditions:
  - At least three days have passed since resolution of fever without the use of fever-reducing medications; AND
  - Improvement in respiratory symptoms (cough, shortness of breath); AND
  - At least seven days have passed since symptoms first appeared.
  
2. *Test-based strategy:* Persons with COVID-19 symptoms that were directed to care for themselves at home may discontinue home isolation under the following conditions:
  - Resolution of fever without the use of fever-reducing medications; AND
  - Improvement in respiratory symptoms (cough, shortness of breath); AND
  - Negative results of an FDA Emergency Use Authorized molecular assay for COVID-19 from at least two consecutive nasopharyngeal swab specimens collected  $\geq$  24 hours apart (total of two negative specimens).
  
3. Individuals with laboratory-confirmed COVID-19 who have not had any symptoms may discontinue home isolation when at least seven days have passed since the date of their first positive COVID-19 test and have had no subsequent illness.

**What Benefits are available to employees who must miss work because they have been diagnosed with COVID-19 or display symptoms and are seeking medical treatment?**

Starting April 1, 2020, employees of employers with less than 500 employees are eligible for sick leave under the Federal Families First Coronavirus Act. Fulltime employees are eligible for up to 80 hours of paid sick leave at their normal wage capped at \$511.00 per day. Part-time employees are eligible for the average number of hours worked in the last two weeks at their normal wage capped at \$511.00 per day.

Under NYS Law, the NYS Paid Leave Benefits due to COVID-19 are only applicable to an individual under an order of quarantine from an appropriate government agency and as of April 1, 2020 the benefits available under NYS COVID-19 Paid Benefits are only available for New Yorkers who exceed the Federal program's salary cap. Individuals that exceed the Federal program's salary cap can apply for supplemental benefits bridging the gap between the Federal and State caps.

Employers must display in a conspicuous spot the poster informing employees of their rights under the Families First Coronavirus Response Act found at:  
[https://www.dol.gov/sites/dolgov/files/WH/WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WH/WH1422_Non-Federal.pdf)

**What if an employee cannot come to work because they must care for a relative who has coronavirus or is quarantined due to the Coronavirus?**

The Families First Coronavirus Act gives sick leave to employees who must stay home to care for an individual under an order of quarantine or isolation or who was advised to self-quarantine by a health care professional. Fulltime employees are eligible beginning April 1 for up to 80 hours of paid sick leave at 2/3 of their normal wage capped at \$200.00 per day. Part-time employees are eligible for the average number of hours worked in the last two weeks at 2/3 their normal wage capped at \$200.00 per day.

If an employee who has met the eligibility requirements has to stay home to care for a sick relative with a serious illness that employee can apply for NYS Paid Family Leave. For more information: Go to <https://paidfamilyleave.ny.gov/paid-family-leave-family-care>

**What if an employee has to stay home to care for a child whose school is closed or day care unavailable due to COVID-19 Precautions?**

Starting April 1, 2020 an employee is eligible for benefits under expanded FMLA under the Federal Families First Coronavirus Act. The expanded FMLA applies to all employees who have worked for 30 days for an employer with less than 500 employees. It offers 12 weeks of

protected leave. The first two weeks are not paid under this Act but can be paid as sick leave if the employee has not already used the 80 hours of sick leave benefits under the Families First Coronavirus Response Act. The sick leave benefits are paid at 2/3 of the employees' wages, but capped at \$200.00 per day. The remaining 10 weeks are paid under the expanded Family Leave Act at 2/3 of the employees' wages, but capped at \$200.00 per day.

### **What if an employee will not come into work because of fear of contracting COVID-19?**

If an employee has no symptoms, has no family member with a serious illness and does not have a child whose school has closed or daycare unavailable because of COVID-19 precautions, then their absence is not protected, unless the employer permits it. An employer may grant the leave, either unpaid or with available accrued Paid Time Off ("PTO"). An employer does not have to grant the leave and can terminate the employee. An employee terminated for cause, such as refusal to work is usually not entitled to unemployment benefits.

This summary is not exhaustive, and the information is constantly changing. Therefore, especially as an employer, it is crucial to stay informed as the legal requirements and guidance develops.

For more information, or consultation on specific issues, please contact Diana Plue, Esq. at Sheats & Bailey, PLLC, a law firm dedicated to serving the construction industry. Diana Plue is Sheats & Bailey, PLLC's specialist in Employment Law and Human Resources. Tel: 315-676-7314, [dplue@theconstructionlaw.com](mailto:dplue@theconstructionlaw.com).