

WHAT DO SAN DIEGO EMPLOYERS DO IF AN EMPLOYEE HAS OR IS LIKELY TO HAVE COVID-19?

Elyssa K. Kulas, Esq.
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Since May 2020 when California Governor Newsom approved San Diego County to move quicker through Stage 2 and Stage 3 of its re-opening plan, more employees are returning to the workplace. However, beginning in June 2020, San Diego County has also seen an increase in the number of COVID-19 outbreaks. What does this mean for San Diego employers, and how should they respond if an employee is likely to have or has COVID-19, or has had close contact with someone who has or is likely to have COVID-19?

To begin, all San Diego County employers must comply with the San Diego County Order regarding safety and sanitation protocols in the work place. Most recently revised on June 18, 2020, the County Order includes preparing and posting a “Social Distancing and Sanitation Protocol,” “Safe Reopening Plan” or “COVID-19 Restaurant Operating Protocol,” as applicable. Employees and on-site contractors are required to possess face coverings and wear them, unless otherwise exempt, when interacting in-person with any member of the public, working in any space visited by members of the public, working in any space where food is prepared or packaged for sale or distribution, working in or walking through common areas (such as hallways, stairway, elevators, and parking facilities), or in any room or enclosed area where people are present when unable to physically distance.

Employers must also conduct temperature screenings of all employees and prohibit their entry in to the workplace if they have a temperature of 100 degrees or more, are exhibiting COVID-19 symptoms (as described by the Center for Disease Control and Prevention (“CDC”)), or if they have recently been exposed to a person who has tested positive for COVID-19. San Diego County is continuously updating and revising its public health orders, so please be sure to frequently check the San Diego County COVID-19 website.

If an Employee Tested Positive or Is Exhibiting COVID-19 Symptoms

An employee who has had a positive lab test for COVID-19, who has signs and symptoms that are consistent with COVID-19 (as described by the CDC and hyperlinked above), or who has been informed by a physician that they are likely to have COVID-19, is required to be isolated and not return to the work place since they are either diagnosed with or likely to have COVID-19. If an employee reports to work exhibiting COVID-19 symptoms, they should not be allowed to enter the workplace and/or should be sent home immediately.

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If an employee meets any of these three criteria, they should not return to the workplace until the employee can meet one of the following:

- a) at least 72 hours have passed since the employee has had a fever without using fever reducing medications, their respiratory symptoms (e.g., cough and shortness of breath) have improved for at least 72 hours, and at least 10 days have passed since their symptoms first appeared;
- b) negative results from an FDA approved COVID-19 test from at least two consecutive respiratory specimens collected less than or equal to 24 hours apart; OR
- c) if the employee has not had any COVID-19 symptoms but has laboratory confirmed COVID-19, at least 10 days have passed since the first positive COVID-19 diagnostic test and they have had no subsequent illnesses. For the 3 days following discontinuation of isolation, these individuals should continue to limit contact with others. Therefore, it is best practice for these asymptomatic employees to stay away from the workplace for 14 days.

Employers do not need to rely on employees self-reporting their symptoms. The Equal Employment Opportunity Commission (EEOC) has issued guidance that authorizes employers to ask employees about their COVID-19 symptoms, and similarly the San Diego County Order allows employers to screen for symptoms.

If an Employee Has Close Contact with a COVID-19 Patient

All employees who have had close contact with a COVID-19 patient must quarantine themselves in their home or residence for 14 days after the last close contact. For example, this includes employees who have had close contact with another employee who has or is likely to have COVID-19, as well as household contacts, intimate partners, caregivers, or any other persons who they have been in close contact with that has or is likely to have COVID-19.

However, essential workers may return to work if they have notified their employer about their close contact with a COVID-19 patient, have no symptoms of COVID-19, and wear appropriate personal protective equipment as required by their job/position.

What Is a Close Contact?

A person is considered to be in close contact with a person diagnosed with or likely to have COVID-19 if, within 48 hours before that person's symptoms began and until that person is no longer required to be isolated, they either a) were within 6 feet of the person who has or is likely to have COVID-19 for more than 15 minutes, or b) had unprotected contact with the body fluids or secretions of a person who has COVID-19. Examples include being coughed on, sneezed on, sharing utensils, or drinking out of the same container with the person who has or is likely to have COVID-19.

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In other words, if the employee's last close contact with a person likely to have COVID-19 occurred more than 48 hours before the individual's symptoms began or after they are no longer required to be isolated, the employee is not required to self-quarantine under the San Diego County Order and they can report to work. Similarly, if an employee has interacted with someone who is likely to have COVID-19, they are not required to quarantine unless they were within 6 feet of the person for more than 15 minutes or if they had unprotected contact with their body fluids or secretions. While these are the criteria set forth by San Diego County, employers should practice common sense and use their best judgment when deciding which employees have had "close contact" with one another, and always err on the side of safety.

Notifying Other Employees

Employers should notify employees who work closely with the COVID-19 patient of their possible exposure in the work place. However, unless the employer obtains consent from the COVID-19 patient, the employer should maintain the confidentiality of the name of the COVID-19 patient, as required by the Americans with Disabilities Act.

Just because employees worked on the same day or in the same department as a colleague who has or is likely to have COVID-19 does not automatically mean the employer must send all employees home for 14 days. As mentioned above, only those employees who have had close contact with someone who has or is likely to have COVID-19 are required to quarantine for 14 days after the last close contact.

Cleaning the Facility

The CDC suggests that if it has been less than 7 days since the sick employee has been in the facility or workplace from when they started exhibiting symptoms, any areas used for prolonged periods of time by the sick person should be closed off. Employers should wait 24 hours, or as long as feasibly possible, before cleaning and disinfecting the area to minimize potential for other employees to be exposed to respiratory droplets. During this waiting period, employers should open outside doors and windows, where possible, to increase air circulation in these areas.

If it has been 7 days or more since the sick employee used the facility or workplace, additional cleaning and disinfecting is not necessary beyond routine cleaning and disinfecting of all high-touch surface areas, according to the CDC.

Importantly, employers should instruct employees to stay home if they are feeling sick and to contact their supervisors or managers immediately if they believe they have COVID-19 or have been exposed to someone who has COVID-19. Transparency is crucial to keeping your workplace safe.

For more information about how COVID-19 is affecting your business or workplace, such as protected leave, reasonable accommodations, and wage and hour compliance, please contact Elyssa Kulas at ekulas@ferrisbritton.com.

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