Contact Tracing for Employers

How to handle investigations and notifications if a worker has COVID-19

By Nancy Cleeland
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After learning that one or more employees have been diagnosed with COVID-19, companies should act quickly to identify and notify any co-workers who might have been exposed during the infectious period.

The worksite investigation, which is generally conducted by HR, is a narrower version of the contact tracing that public health officials are gearing up to do on a massive scale to contain the spread of the coronavirus as the economy reopens.

Employers should be careful to maintain confidentiality and also avoid alarming the entire workforce, legal and HR experts said.

"It's really not that complicated," said Travis Vance, a partner with Fisher Phillips based in Charlotte, N.C., who said he has worked with hundreds of employers on notifications of workplace coronavirus contact. The most important thing is to have a plan and implement it immediately, he said. "You've got to nip [the spread of the infection] in the bud. If you don't, it's going to go through the workplace pretty quickly."

Prompt notification and follow-up reduces the risk that other employees will be exposed to the virus, and so these actions fall under the Occupational Safety and Health Administration's general duty requirement to provide a safe workplace, attorneys said.

The Centers for Disease Control and Prevention (CDC) has determined that COVID-19 exposure risk begins when someone is within 6 feet of the infected person for 15 minutes or more (https://www.cdc.gov/coronavirus/2019-ncov/php/principles-contact-tracing.html). The agency also notes that infected people can spread the virus 48 hours before the onset of symptoms. Vance calls that combination of factors the "6-15-48 rule (https://www.fisherphillips.com/resources-alerts-6-15-48-these-3-numbers-offer)". According to the CDC, employers should send home any employees who have had a risk of exposure and advise them to maintain social distancing and self-monitor for 14 days from the exposure. If a business is considered essential, however, CDC guidelines say exposed employees can continue to work (www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/pages/new-cdc-guidance-says-essential-employees-can-continue-working-after-coronavirus-exposure.aspx) onsite while self-monitoring and wearing a face mask.

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Employers can satisfy their exposure-notification obligations by following these steps:

Be prepared. Describe the company's contact-tracing process as part of a policy for responding to a case of COVID-19 in the workplace, and make the policy available to all employees, notifying them that if they contract the coronavirus, they will be asked to provide a list of contacts at work. Set up processes to allow for quick identification of contacts, such as meeting logs. Create a list of standard questions or talking points to use in interviews to learn the movements of the exposed person and to provide guidance for seeking medical help.

Prioritize confidentiality. Employers have the right to ask employees if they have symptoms or have been diagnosed with COVID-19 (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/eeoc-coronavirus-temperature.aspx) without violating the Americans with Disabilities Act, according to guidance from the Equal Employment Opportunity Commission. But they should never divulge the name of an infected employee to others at the workplace beyond those conducting the investigation.

"What you can do is give general characteristics, as in what floor, office or team that employee worked on," said Sirmara Campbell, chief human resources officer at the staffing and recruiting firm LaSalle Network of Chicago and Nashville. "You will not be held responsible if employees make assumptions of who the [infected] employee is on their own, so long as the employer never reveals the name."

Recording contact-tracing information also calls for care. "Most companies are keeping some form of record so they can establish that they, in fact, made the [contact-tracing] effort, but they have to keep it confidential and separate," said Jennifer Betts, a Pittsburgh-based attorney with Ogletree Deakins. She advised creating a form in advance to standardize the information stored. "A template adds an extra layer of comfort," she said.

Work with state and local health departments. They are the big guns of contact tracing and have greater legal authority to find people, especially beyond the workplace, said Dr. Clarence Lam, interim director for occupational health services at Johns Hopkins Medicine. "Right now, it's challenging to figure out where an individual got their COVID case from. The risk can be as high in a grocery store as the workplace," he said, noting that public health contact tracers can follow those lines of transmissions.

Sometimes, an employer might first hear about a worker's case from a public health official, and in that case, the organization can cooperate by providing schedules, contact information and even a walk-through of the facility. Conversely, Lam said, if the employer learns about an employee's illness first, it should contact the local or state health department and begin a collaborative effort. Health departments may also be able to assist employers in conducting worksite tracing, Lam said.

Consider apps or other electronic aids. Hundreds of apps have been developed to assist in contact-tracing efforts and are being marketed to public health agencies and employers. Many have been adapted from other uses; for example, North Dakota worked with a software vendor to adapt an app previously used to count bison.

Typically, a worker downloads the app to a cellphone, and Bluetooth technology records when another employee comes closer than six feet. Wearable proximity devices are also being marketed that would serve the same purpose. When an employee reports a COVID-19 case, the technology should be able to quickly provide a list of contacts during a defined period.

Betts, a member of Ogletree Deakins' tech group who recently co-authored a blog (https://ogletree.com/insights/an-update-on-coronavirus-contact-tracing-status-benefits-and-key-considerations/) post about the plethora of new devices, said electronic contact tracing may be most useful for large companies with more than 1,000 employees and lots of interaction. "Every day, new apps are on the market, and some are better than others. You don't have to go high-tech," she added. "Most of my clients are doing it the old-school way, with paper."

Follow up with quarantined employees. Remember to stay in touch with employees who've been quarantined, and if any of them show symptoms or are diagnosed with COVID-19, begin another contact-tracing exercise to identify those they might have exposed.

Working through the exercise of contact notification also underscores the importance of keeping employees separated at work (www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workspaces-Evolve-to-Allow-Physical-Distancing.aspx) in the first place, by staggering schedules, encouraging telework, creating workflows that limit interaction, installing partitions and more.

As Campbell of LaSalle Network noted, "The less movement employees have within the office, the more helpful it will be should you need to conduct any contact tracing."

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