

What Employers Should Know About the Latest CDC COVID-19 Guidance

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March 6, 2024

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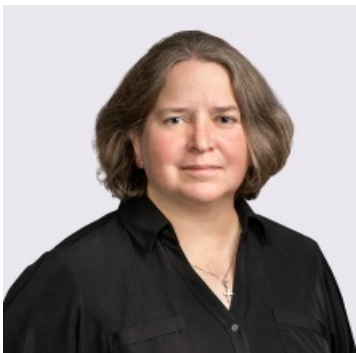
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It has been almost exactly four years since the COVID-19 pandemic changed the American working landscape. Many of us followed the Centers for Disease Control and Prevention (CDC) through multiple changes and guidance, including from no mask, to mask, to no mask. On March 1, 2024, the CDC changed the isolation guidance for those with COVID-19.

[CDC guidance now recommends that individuals treat COVID-19 like other respiratory viruses](#) such as the flu and RSV. That means the CDC is no longer recommending a [minimum five-day isolation period](#) for everyone with COVID-19.

CDC's Respiratory Virus Guidance

The [CDC's Respiratory Virus Guidance](#) says people who are sick with a respiratory virus, including COVID-19, should stay home and away from others until at least 24 hours after both their symptoms are getting better overall and they have not had a fever (and are not using fever-reducing medication).

Because some people may remain contagious after this period, the CDC advises that people should take additional preventive steps for five days after returning to normal activities, "such as taking more steps for cleaner air, enhancing hygiene practices, wearing a well-fitting mask, keeping a distance from others, and/or getting tested for respiratory viruses." The CDC reminds us that "[e]nhanced precautions are especially important to protect those most at risk for severe illness, including those over 65 and people with weakened immune systems."

In addition to the Respiratory Virus Guidance, the CDC published extensive [background](#) and a [series of FAQs](#) providing additional context, explanation of the rationale behind the changes, guidance for people at higher risk, and guidance for certain settings such as schools, correctional facilities, and shelters.

For healthcare industry employers, the Respiratory Virus Guidance does not apply to healthcare settings. The CDC offers separate, specific guidance for healthcare settings ([COVID-19, flu, and general infection prevention and control](#)) and [Interim Guidance for Managing Healthcare Personnel with SARS-CoV-2 Infection or Exposure to SARS-CoV-2](#) that the CDC said is not currently changing.

Additional Considerations

In addition to staying home while sick, the CDC continues to recommend that everyone use "core prevention strategies," including staying up-to-date with immunizations, practicing good hygiene, taking steps for cleaner air, and seeking appropriate treatment.

What This Means for Employers

Since the official end of the COVID-19 public health emergency last year, employers

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have been in a quandary concerning what, if any, steps were required if an employee reported they had tested positive for COVID-19. Many employers have continued to follow CDC guidance.

The latest CDC change makes it easier for these employers to begin treating COVID-19 like they treat other respiratory illnesses. In many jurisdictions and industries, COVID-19 protocols have evolved away from contact tracing and reporting and now, employers can say goodbye to the five-day isolation periods (some of the last traces of the pandemic guidelines). However, employers still need to consider state and local health authorities that may have different guidelines and certain industries (like healthcare) continue to have their own requirements. In addition, for employers in New York, where COVID-19 paid sick leave still exists, employers will have to consider the impact of the change on paid sick leave obligations.

OSHA

Although the Occupational Safety and Health Administration (OSHA) issued guidance on mitigating and preventing the spread of COVID-19 in the workplace, this guidance has not been updated since 2021. At that time, it largely followed the CDC guidance. The OSHA guidance, by its very terms, was “advisory in nature and informational in content.” OSHA’s General Duty Clause remains the standard applicable in most settings. The General Duty Clause requires employers to provide a work environment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees.

However, at this point, it remains questionable whether OSHA could issue citations to nonhealthcare industries under the General Duty Clause in light of the U.S. Supreme Court decision in January 2022 on the Emergency Temporary Standard for COVID-19 in which the Court questioned whether COVID-19 was even an occupational hazard in most industries. That decision, along with this new CDC guidance (which is based on data that suggests COVID-19 is waning significantly in its seriousness) suggests OSHA would have a difficult time doing so.

Will OSHA Ever Issue a Final Rule for COVID-19 in Healthcare Settings?

Although OSHA sent its final rule for COVID-19 in healthcare to the White House’s Office of Management and Budget for final approval last year, a rule has yet to be released. However, OSHA quietly updated its unified regulatory agenda for fall of 2023 to add COVID-19 to a broader [proposed rule](#) for infectious diseases, targeted to drop in June of 2024.

That proposed rule would impact healthcare, emergency response, correctional facilities, homeless shelters, drug treatment programs, and other occupational settings where employees can be at increased risk of exposure to potentially infectious people. However, OSHA often misses these self-imposed target dates in the rulemaking process. As this is an election year, even if OSHA could issue a proposed rule, solicit comments, and publish a final rule, such a rule could be set aside if the administration changes. In any event, such a rule is likely to be challenged in federal court.

If you have questions about your COVID-19 policies or protocols or other illnesses in the workplace, please reach out to a Jackson Lewis attorney.

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