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## *COVID-19: Employer Best Practices for Responding to Potential Exposure*

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*April 2, 2020. Construction industry employers face complicated issues every day, but the COVID-19 (or, more commonly, the “coronavirus”) pandemic is unprecedented in many respects. While ultimately employers should make decisions based on their businesses and the circumstances at hand, Indiana Constructors has teamed up with Faegre Drinker Labor & Employment Lawyers Stuart Buttrick, Susan Kline, and Angela Johnson to offer the following guidance.*

In light of the global spread of COVID-19 and increasing availability of tests, the likelihood that an employee will receive a confirmed COVID-19 diagnosis, or be in close contact with someone with a presumed or confirmed COVID-19 diagnosis, is growing every day. If (or more likely, *when*) this happens, Indiana employers should follow all city, county, state, and federal orders and guidance, including specifically Indiana Governor Holcomb’s Executive Order (which is currently in effect until 11:59 p.m. on April 6, 2020) and guidance from the Center for Disease Control (“CDC”).

This means Indiana employers should consider the following actions when an employee: (1) has a confirmed COVID-19 diagnosis; (2) is symptomatic;<sup>1</sup> (3) has been told by a healthcare provider that he or she has a “presumed” COVID-19 diagnosis, and/or is awaiting test results; or (4) has had recent (within the last two weeks) close contact<sup>2</sup> with someone with a presumed or confirmed COVID-19 diagnosis:

- ✓ Restrict access to the worksite. Under best practices, the employee should not report to work, or should leave the worksite promptly upon learning this information, even if he or she is not currently exhibiting symptoms associated with COVID-19. Symptoms might not appear until 2-14 days after exposure, yet an employee without symptoms could still expose others to the virus.
- ✓ Encourage self-quarantine with healthcare guidance.
  - Employees who have been diagnosed with COVID-19 (whether confirmed or presumed) should not return to the worksite until they have recovered, in consultation with their healthcare providers. According to CDC guidelines, the employee should remain home until two consecutive tests are performed at least 24 hours apart and both tests are negative.

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<sup>1</sup> The CDC has listed the following common symptoms, while noting that this is not an inclusive list and other symptoms have been reported: fever, cough, shortness of breath / trouble breathing, persistent pain or pressure in the chest.

<sup>2</sup> The CDC defines close contact as being within approximately six feet of a COVID-19 case for a prolonged period of time, for instance while caring for, living with, visiting, or sharing a healthcare waiting area or room with a person who has COVID-19, or having direct contact with infectious secretions of a COVID-19 case (for instance, being coughed on).

- Symptomatic employees – even those who have not received confirmed diagnoses – should be encouraged to contact their healthcare providers (or alternatively, the Indiana State Department of Health Coronavirus Hotline at 877-826-0011) for further guidance, and stay home until they are free of fever and other symptoms without the use of medication for at least 72 hours and at least seven days have passed since symptoms first began.
- Employees who have been in close contact with someone who has been diagnosed with COVID-19 should self-quarantine for 14 days from the date of exposure and be encouraged to contact a healthcare provider if symptoms develop.
- ✓ Contain potential exposure. Disinfect all equipment, tools, and other objects or surfaces the employee may have touched (or sneezed/coughed on) before co-workers resume working with or around those surfaces. A list of CDC-recommended cleaners, such as bleach and alcohol solutions with at least 70% alcohol, is available here: <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>. In addition, employers should determine whether other employees may have been exposed. Consider sending other employees who recently had close personal contact with an employee who has a presumed or confirmed COVID-19 diagnosis home for self-quarantine for 14 days from the date of exposure. Employees may want to know who is the source of the exposure risk. We do not recommend disclosing the identity of someone infected, unless that person gives voluntary consent. Of course, workers may figure out who is missing from work and connect the dots, but we recommend using phrases such as a “co-worker who works in ‘x’ area” or similar general descriptions without providing a name.
- ✓ Keep in touch. Ask the employee to contact a member of management or human resources to share information concerning the potential exposure and discuss who else may be affected, and to remain in contact concerning symptoms and anticipated return to work date. For instance, asking for updates via email or phone every two to three days is appropriate.
- ✓ Be flexible about healthcare validation. Governor Holcomb’s Executive Order states that Indiana employers must not require a healthcare provider’s note to validate an illness or verify the employee’s ability to return to work, noting that medical facilities may be overloaded and unable to provide such documentation in a timely manner. However, employers assessing whether to allow an employee to return to work may ask if the employee has been cleared by a healthcare provider and/or when the employee last experienced symptoms. Further, the Families First Coronavirus Response Act does permit employers to require documentation to support an employee’s eligibility for paid sick leave and emergency family and medical leave under the Act.
- ✓ Do not penalize employees for absences caused by the COVID-19 crisis. Under the Executive Order, Indiana employers must not punish employees who need to stay home to care for themselves, children, or other family members for reasons arising from the pandemic. This includes not assessing attendance points or discipline for such absences. Indiana employers are not required to pay employees for time off, unless a collective bargaining agreement, contract, or company policy states otherwise, although employers of fewer than 500 employees may be required to provide certain paid leave benefits to employees under the recently enacted Families First Coronavirus Response Act (FFCRA). And even when not required by law, many employers are offering relaxed and/or additional paid leave benefits or allowing employees to take unpaid leave while preserving accrued paid time off, especially if considered necessary to motivate employees to stay at home if they present a known exposure risk to co-workers.

*Please note that the issues surrounding the pandemic are fast-evolving, and while this document, prepared on April 2, 2020, references CDC guidelines as of this date, the most up-to-date CDC guidelines can be obtained here: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>. If you have questions concerning these issues or other employment concerns, contact a member of Faegre Drinker’s Labor & Employment Practice Group.*