

Labor & Employment Law Alert: New York State Health Department Issues Protocols for Essential Personnel to Return to Work Following COVID-19 Exposure or Infection

The New York State Department of Health issued written protocols on March 28, 2020 to guide public and private sector organizations that provide essential services or functions in determining how and when they may allow essential personnel who were exposed to or are recovering from COVID-19 to return to the workplace setting, if needed to maintain essential operations, during the COVID-19 emergency. This advisory document was superseded by another version dated March 31, 2020 to make it clear that the protocols apply not only to essential personnel who have been exposed to a confirmed case of COVID-19 but also to essential personnel who have been exposed to a suspected case of COVID-19.

The revised document can be [found here](#).

The protocols state in part that essential personnel who have been exposed to a confirmed or suspected case of COVID-19 can be permitted to work in the required workplace setting if all of the following conditions are met:

1. Working from home would not be feasible for job duties;
2. Personnel are asymptomatic;
3. Personnel quarantine themselves when not at work;
4. Personnel undergo temperature monitoring and symptom checks upon arrival at work and at least every 12 hours while at work, and self-monitor (i.e., take temperature, assess for symptoms) twice a day when at home;
5. Personnel required to interact with individuals within 6 feet should wear a facemask (i.e., a well-secured mask that covers the mouth and nose, with no personal fit testing necessary for the facemask) while working for 14 days following the last exposure;
6. Personnel whose job duties permit a separation of greater than 6 feet should have environmental controls in place to ensure adequate separation is maintained, and do not need to wear a facemask;
7. If personnel develop symptoms consistent with COVID-19 (e.g., fever, cough, or shortness of breath) while working, they should immediately stop work and isolate at home; and
8. Testing should be prioritized for essential personnel with symptoms.

Essential personnel with confirmed or suspected COVID-19 may be permitted to work in the required workplace setting if all of the following conditions are met:

1. Working from home would adversely impact essential services or functions, including critical public health and public works infrastructure in New York or the response to the COVID-19 public health emergency;
2. Personnel have maintained isolation for at least 7 days after illness onset (i.e., symptoms have first appeared) and have not had a fever for at least 72 hours, without the use of fever-reducing medications, and with other symptoms improving; and
3. Personnel who are recovering from COVID-19, and return to work, must wear a facemask (i.e., a well-secured mask that covers the mouth and nose, with no personal fit testing necessary for the facemask) for 14 days following onset of illness.

Labor and employment issues surrounding the COVID-19 pandemic are rapidly evolving and, as both the New York State and federal governments offer further guidance on these issues, we will endeavor to update clients accordingly.

As employers navigate these issues, our Firm's labor and employment attorneys listed below are standing by to provide legal advice.