



January 9, 2021

## **New York State Department of Health Provides Clarification on Revised Protocols for Personnel in Healthcare and Other Direct Care Settings to Return to Work Following Covid-19 Exposure**

On December 26, 2020, the New York State Department of Health ("DOH") updated its protocol for personnel in healthcare and other direct care settings to return to work following COVID-19 exposure, or travel, to align with revised guidance from the Centers for Disease Control and Prevention ("CDC") to shorten the recommended quarantine period. See [Client Alert](#).

On January 7, 2021, the DOH issued [guidance](#) clarifying the December 26, 2020 health advisory to align with the CDC "Interim U.S. Guidance for Risk Assessment and Work Restrictions for Healthcare Personnel with Potential Exposure to COVID-19" and "Strategies to Mitigate Healthcare Personnel Staffing Shortages." The purpose of the guidance is to provide clarification on the next steps for health care entities with current or imminent staffing shortages. This guidance applies to all healthcare settings, including hospitals, end stage renal disease (ESRD) facilities, emergency medical services, home care, outpatient clinics, dentists and private practices.

## **Clarification on Guidelines for Asymptomatic Healthcare Personnel ("HCP") Returning to Work After Exposure to COVID-19**

- Asymptomatic HCP who have been exposed to or been in contact with a confirmed or suspected case of COVID-19 in the healthcare setting (e.g., had higher-risk prolonged close contact with patients, visitors or other HCPs with confirmed or suspected COVID-19, while not wearing recommended personal protective equipment per CDC guidelines), may return to work after 10 days of quarantine without testing, if no symptoms develop during the quarantine period, provided the following additional conditions are met:
  - HCP continue daily monitoring of symptoms through day 14;
  - HCP are counseled to continue strict adherence to hand hygiene and use of face coverings;
  - HCP are advised that if any symptoms develop, they must immediately self-isolate and contact the local health authority or healthcare provider.
- Asymptomatic HCP who had close community contact within 6 feet of a confirmed or suspected case for 10 minutes or more, may return to work after 10 days of quarantine without testing, and no symptoms develop during the quarantine period, and the above additional conditions are met.
- Asymptomatic HCP deemed to have had an exposure by a local health department, may return to work after 10 days of quarantine without testing, and no symptoms develop during the quarantine period, and the above additional conditions are met.
- Asymptomatic HCP returning from travel to a non-contiguous state, or a territory subject to a CDC level 2 or higher COVID-19 risk assessment, may return to work consistent with the essential worker requirements in the Department's travel advisory.
  - In addition, HCP who travel to a non-contiguous state receive a COVID-19 diagnostic test within 24 hours of arrival in New York, and again on the fourth day after their return.
- Asymptomatic HCP at nursing homes and adult care facilities certified as EALRs or ALPs who have been exposed or in close contact with a confirmed or suspected case of COVID-19 may be released from quarantine according to these guidelines after 10 days, but must remain furloughed from work for 14 days.

This guidance does not apply to HCP who are known or suspected to have COVID-19 and are in isolation.

## **COVID-19 Paid Sick Leave**

HCP who are furloughed due to contact with a known positive case, or who do not meet the above conditions to return to work, may qualify for paid sick leave benefits. Their employers can provide them with a letter confirming the need to quarantine, which can be used to show eligibility for paid sick leave benefits. However, employees are not eligible for paid sick leave benefits under the New York COVID-19 paid sick leave law if they engage in voluntary travel to a non-contiguous state or to a level 2 or higher country.

## **Guideline for Healthcare Entities With Current or Imminent Staffing Shortages**

Hospitals with current or anticipated inability to provide essential patient services prior to reaching 85% bed capacity, may allow exposed HCP to return to work early, upon approval of the Commissioner of Health. Similarly, non-hospital entities, including nursing homes, adult care facilities, ALP, EALR, home care, hospice, and other congregate settings, as well as EMS, with actual or anticipated inability to provide essential patient services, may allow exposed HCP to return to work early, upon the Commissioner of Health's approval.

In order to request authorization to allow exposed HCP to return to work early, healthcare entities must ensure that they have in place strategies to mitigate healthcare personnel staffing shortages, as outlined by the CDC. See CDC's December 14, 2020 Strategies to Mitigate Healthcare Personnel Staffing Shortages. Healthcare entities should complete the required checklist for the HCP Return to Work Waiver, and upload the CEO attestation confirming that the facility has implemented or attempted to implement staffing mitigation strategies. Entities should not call the Surge and Flex Operations Center to request this authorization.

Upon approval of the Commissioner of Health, healthcare entities may allow asymptomatic HCP who have been exposed to or have been in contact with a confirmed or suspected case of COVID-19 within the past 10 days to return to work, provided the following conditions are met:

- HCP must be asymptomatic;
- HCP must test negative (PCR or antigen) to return to work after an exposure, and must thereafter be tested every 2-3 days until Day 10 after exposure;
- HCP self-monitor for symptoms and conduct daily temperature checks through Day 14;
- HCP must quarantine when not at work;
- If the HCP develop COVID-19 symptoms, they should immediately isolate at home. All staff with COVID-19 symptoms should be immediately referred for diagnostic testing

## **Additional Assistance**

Hospitals, ESRDs, dentist, private practices, EMS, nursing homes, adult care facilities, home care, and hospices must contact the Department's Surge and Flex Operations Center at 917-909-2676 whenever they are concerned about staffing, patient care capacity, or other triage concerns. The Center is available 24 hours a day, 7 days a week.

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If you have any questions regarding this alert, please do not hesitate to contact us.

**[PUTNEY, TWOMBLY, HALL & HIRSON LLP](#)**

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