

## Publication

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### The Six Degrees of COVID-19 – Dealing with Gray Area Questions of Exposure

Over the past few weeks, we have received many questions from our clients who are conducting essential or minimal operations in their physical workplaces and are struggling with how to best respond in the “gray area” COVID-19 cases. Typically, these involve employees who are not experiencing symptoms or seeking diagnosis for COVID-19 themselves and are not taking care of someone who is experiencing such symptoms or has been diagnosed. Rather, these employees, and sometimes the client, are concerned about the employee having come into contact with someone who has (or may have) been exposed to COVID-19. The CDC and OSHA guidelines do not offer specific guidance to these tough questions, but some best practices are apparent based on the generally available COVID-19-related guidance and experience. The key practical tip in these “gray area” scenarios is to use best judgment to respond appropriately based on objective *facts*, not fear.

For example, if an employee is experiencing symptoms of COVID-19 or is taking care of someone who has been diagnosed with the virus, no question the employer should send that employee home for 14 days and require a release from a healthcare provider prior to allowing that employee to resume work. An employee also should be made to sit out if taking care of a family member who is experiencing COVID-19 symptoms and

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seeking diagnosis, until that diagnosis has been received.

The employer's position generally should be that employees may continue to work, if comfortable, unless the circumstances change. For example, an employee living with a spouse or family member who is a first responder or who otherwise "may" have been exposed, in and of itself, is not an appropriate reason to prevent that employee from coming into work if they would like to work.

At the very minimum, there should be objective evidence that the individual the employee lives with, or came into close contact with, was exposed to someone diagnosed with COVID-19 and was prevented from coming into work, or received a recommendation from a healthcare professional to self-quarantine, as a result. In some cases, contact with the confirmed exposed individual may be too attenuated to justify requiring the employee to sit out; appropriate questions should be asked to make that determination.

If, however, an employee requests to not come in based on his or her own concerns of exposure, even if those are not objectively substantiated, generally the best practice is to allow that employee to take reasonable time off, which likely may be unpaid, without an attendance penalty.

Gray area exposure cases require balancing individual facts and circumstances in an objective, thoughtful manner. Employers who are maintaining any operations in their physical workplaces, as permitted under applicable executive orders, should implement effective action plans and communication protocols to account for potential cases of diagnosis, exposure and potential exposure – so as to have these tools on the ready to



implement any appropriate steps and communications if and when questionable or problematic situations arise.

If you have any questions regarding gray area exposure or other labor and employment issues, please do not hesitate to contact Sonya Rosenberg or your Neal Gerber Eisenberg attorney.

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