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COVID-19 on Your Construction Jobsite . . . Now What?

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One morning, you receive that dreaded phone call from an employee saying “Boss, I just tested positive for COVID-19.” Later that day, one of your subcontractors calls to let you know one of their workers has a roommate who has tested positive for COVID-19. Now what? The reality is that if this hasn’t already happened on your jobsite, chances are you will receive a call eventually. If you are responsible for jobsite management and/or safety, you will have to grapple with the difficult task of determining how to staff your jobsite, whether it is safe to continue working, and whether the project should continue. Your answer will largely depend on what preventative steps were taken already and how quickly and effectively a plan to mitigate the effects of a positive test can be implemented. The world was not prepared for this pandemic, so beating yourself for your past actions or inaction will not solve anything. If you do not currently have a plan in place to respond to an employee testing positive for COVID-19, consider this a call to arms to act **now** and mitigate the impacts a positive test will have on your remaining employees, jobsite, project completion, and construction company.

It is worth noting that as of the writing of this article, COVID-19 testing is not readily available in most areas. If your employee reports that he has COVID-19, it’s likely that he received a diagnosis from a health care provider who determined their symptoms were consistent with COVID-19. We generally recommend treating this sort of diagnosis the same as a positive COVID-19 test. Don’t panic; don’t overreact. But there are steps you need to take to respond depending when the employee was last on the site and when symptoms began. More on that later.

What You Should Already Be Doing – Implementing a COVID-19 Jobsite Safety Program.

It is vital that general contractors have a COVID-19 jobsite safety program in place to protect employees, subcontractors, and jobsite visitors against the daily spread of COVID-19. If measures are not currently underway to control the spread of

COVID-19, then when a positive test for COVID-19 is reported, a general contractor might have few options other than assuming everyone on the jobsite has been exposed and evaluating the safety of entire jobsite. COVID-19 safety programs should be individually tailored for each specific jobsite and company, but generally they should include:

1. social distancing requirements;
2. minimizing congested staffing and staging work scheduling;
3. implementing requirements for the use of gloves, face covering, and/or face shields;
4. instituting heightened hygiene, sanitation, and cleaning practices;
5. regulating use and congestion in job trailers, elevators, and lunch and break areas; and
6. daily monitoring of employee health, to possibly include taking employee temperatures.

For any company still seeking to develop a COVID-19 safety program, we recommend partnering with legal and safety professionals. For more information on crafting your company's COVID-19 safety program, contact our Workplace Safety and Health team. At a minimum, CDC guidelines are a helpful starting point; CDC recommended safety practices for Critical Infrastructure workers may be found on [cdc.gov](https://www.cdc.gov).

What You Should Do Upon Notice of a Positive Test for COVID-19 – Implementing a COVID-19 Response Plan.

To successfully respond to a confirmed case of COVID-19 on a jobsite, your business management needs to take decisive action and require cooperation from all parties involved. With proper planning and communication of honest expectations, a confirmed case of COVID-19 does not have to spell shut down for a project. The following should be considered in response to a confirmed case of COVID-19.

A. Know who is in Charge – Understand Contractual Responsibilities.

It is well recognized that the general contractor (or construction manager) is typically vested with site control and responsible for all operations on a jobsite. The delegation of site control authority is contained in American Institute of Architects (AIA) form A201-2017 § 3.3.1, which states that the contractor “shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract.” Further, the general contractor “shall be solely responsible for jobsite safety,” so, from a purely contractual perspective, the responsibility for the implementation and enforcement of a comprehensive COVID-19 response plan is likely on the general contractor and, specifically, the safety director. Accordingly, a general contractor's representative should be identified and trained (preferably in advance) in how to manage a jobsite once a confirmed COVID-19 case is reported.

From a practical perspective, solely placing the duty to safeguard a jobsite and respond to a COVID-19 outbreak on the shoulders of the general contractor is likely a mistake. Commercial projects involve a large number of people transitioning on and off the jobsite. While a contractor has control of subcontractors and suppliers while they are on the premises, the same isn't true once they leave the jobsite. A subcontractor or material supplier might send crews to multiple jobs on any given day, creating additional exposure risks. Not all jobsites are exercising a high degree of exposure prevention, which

results in a constant battle to prevent cross-contamination between projects. As a preventative measure, developing policies or contract clauses that require “transient” subcontractors and suppliers to notify a general contractor of a confirmed case on other jobs, could be a useful tool to prevent the spread to your jobsite.

For additional information on the contractual implications, please review our Contractor’s COVID-19 Toolbox located on the COVID-19 Contractor Toolbox.

B. Tracking the Outbreak – Circle Strategy

To understand how you can reduce the impact of a COVID-19 case on your construction project, you should look to public health officials and other workplace safety professionals (including your legal counsel) for your action plan. Public health experts describe the public health response as an exercise in drawing circles. That is, they draw circles around the potential exposure to other people who were in contact with the person who received a COVID-19 diagnosis. This evaluation will look at not only person-to-person contact, but person-to-surface-to-person contact. The virus is thought to be transmitted either through the breath (which contains tiny droplets) or saliva of an infected person or through contact with contaminated surfaces. It is nearly impossible for public health officials to identify those persons who might have had contact with contaminated surfaces. Thus, most public officials are concentrating their mitigation efforts on person-to-person exposure only. Unfortunately, in some communities, the public health professionals do not have the resources to even do that.

When an employee or subcontractor has been diagnosed with COVID-19, employers have found it necessary to take on the responsibility of identifying (“circling”) and contacting those who may have been exposed, and then removing the exposed individuals from the job-site. The consideration of whether another person falls within the “exposure circle” involves the following:

- (1) the extent to which the employees on the jobsite were engaging in proper hygiene practices;
- (2) whether surfaces were regularly cleaned;
- (3) whether employees were observing social distancing practices;
- (4) whether employees were wearing protective gear that limited their exposure;
- (5) how long the infected individual was on the jobsite while symptomatic; and
- (6) whether persons who were exposed to a symptomatic individual remained in the workplace after being exposed to that symptomatic individual.

Again, the above outlines the necessity of practicing a COVID-19 safety program.

C. Managing the Sick and Exposed – Decisively Implement Confirmed Case Response Plan.

Hopefully the employee with a confirmed case of COVID-19 (“confirmed sick”) called you to let you know her status. Some time will have gone by since the onset of symptoms before you know the employee status. Whether you are just learning an employee was ill, or the employee left the job due to symptoms, an exposure analysis should be completed.

Determine whether others were exposed first by asking two questions: (1) when was the individual last on the jobsite; (2) when was the individual first symptomatic? Document these answers. The CDC says that a person is contagious 48 hours before symptoms. If the employee was on the jobsite after symptoms began, or within 48 hours before, the confirmed sick employee is your first “circle”. If possible, talk to that employee (over the phone) about where she was working on the jobsite, what she was doing, and who she came in close contact with – implement the circle strategy. Document the contacts and determine whether the contact fell within that contagious period plus 48 hours earlier. If so, they are still just a contact. Next determine exposure within the circle of the infected individual. Note: Depending on how far back in time the first circle individual was symptomatic, caution is advised. You may be talking to a person who is also developing symptoms – a second circle.

Evaluating exposure considers whether the contact was: (1) within 6 feet for a significant period; (2) talking face to face; (3) sneezed on or coughed on; (4) sharing tools or regularly touching common surfaces. Experts say a significant period is 10 minutes, but often it is hard to recall actual length of time. So, the focus should be on face to face contact, talking, or being very near the person, in contrast to walking past someone. Persons who have been determined to have been exposed, generally should be sent home and asked to remain off the job for 14 days. Suggest that they seek advice from a health care professional.

As this is taking place, implement the remainder of your COVID-19 response plan. An effective response to a confirmed COVID-19 case requires analysis of each individual jobsite and an understanding of what exposure mitigation efforts were already being taken. However, the following principles form the backbone of an effective response plan:

1. **Communicate:** Inform owner, architect, and subcontractors of a positive case of COVID-19.[1] Be careful not to provide the identity of the sick person. But provide enough information to allow others to evaluate their risk of exposure.
2. **Investigate:** Continue “drawing circles” around possible exposures. For “critical infrastructure” workers, the CDC defines a potential exposure as having household contact or having close contact within 6 feet of an individual with confirmed or suspected COVID-19. Did employees share living space with the first circle, before, during or after onset of symptoms? Again, the timeframe for having contact with an individual includes the period of time of 48 hours before the individual became symptomatic. Remember, we are also concerned with person-to-surface-to-person transmission, so contaminated areas of the jobsite and tools should be identified, and cleaned as discussed below.
3. **Safeguard/Separate:** Managing potentially exposed individuals requires a determination of whether that person is a critical infrastructure worker. If so, pursuant to CDC guidelines, self-isolation might not be required for an asymptomatic employee if he is monitored, his workspace is sanitized, he is provided PPE, and social distancing guidelines are followed. However, dependent on the characteristics of your business and jobsite, a standard period of self-isolation might be prudent following exposure. For non-critical infrastructure workers, self-isolation for 14 days is typically recommended following exposure. Individuals who are sick will be required to self-quarantine, but CDC guidelines allow for the ending of self-isolation if: (1) at least seven days have passed since symptoms first appeared; and (2) at least three days have passed since “recovery,” defined as resolution of fever without fever-reducing medications; and (3) improvement in respiratory symptoms.

4. **Sanitization:** Regular cleaning of high touch surfaces should already be part of your program. If a symptomatic individual (including the 48 hours prior to symptoms) was on the job, more extensive cleaning is recommended.[2] If your company is self-performing cleaning, wait 24 hours since the symptomatic person was at the workplace to protect cleaners. If trained specialists wearing proper PPE will do the cleaning, this period may be shortened. Fully clean all potentially-contaminated surfaces, including tools, with disinfectants approved to kill the COVID-19 virus.
5. **Report:** If required, notify workers compensation insurance and complete OSHA 300 log, in the event you have a second circle linked to the first circle.

The flowchart at the end of this Alert illustrates an example response to a positive test for COVID-19 or suspected infection.

Staffing Concerns – Understanding the Various Leave Statuses Related to COVID-19.

For many, the chief concern about COVID-19 is the high rate of transmissibility. On a jobsite, this might manifest in multiple employees becoming infected in a short period of time and a resulting project labor shortage. It is important for contractors to understand employee leave statuses and schedule workers accordingly. The Families First Coronavirus Response (FFCRA) specifically addresses leave for infected and potentially infected employees. The FFCRA requires employers with fewer than 500 employees to allow employees to take paid emergency sick leave if they have COVID-19 or are experiencing COVID-19 symptoms. The FFCRA also extends the Family Medical Leave Act (FMLA) to allow employees to take paid leave to care for a minor child, if the child's school or daycare is closed due to COVID-19 – even if the employee is not sick.

Under the emergency paid sick leave provisions of the FFCRA, an employee is eligible to take paid sick leave if he/she is:

- (1) subject to a quarantine or isolation order or advised by a healthcare provider to isolate or quarantine;
- (2) experiencing symptoms of COVID-19 and actively seeking a diagnosis;
- (3) caring for an individual subject to a quarantine or isolation order or has been advised by a healthcare provider to isolate or quarantine; or
- (4) is caring for a minor child whose school or daycare has been closed due to COVID-19[3].

Emergency paid sick leave is paid at the employee's regular rate of pay, except for reasons (3) and (4), which are paid at two-thirds (2/3) the employee's rate of pay. Certain pay maximums apply. Emergency paid sick leave covers a maximum of ten (10) working days (or two weeks) per employee.

In administering these new paid leave provisions, employers are cautioned that each request for paid leave, whether emergency paid sick leave or FMLA leave, should be evaluated on a case-by-case basis with your HR staff or your labor and employment lawyer. Proper documentation should be requested so the employer can apply for a tax credit for any FFCRA leave paid to employees between now and December 31, 2020.

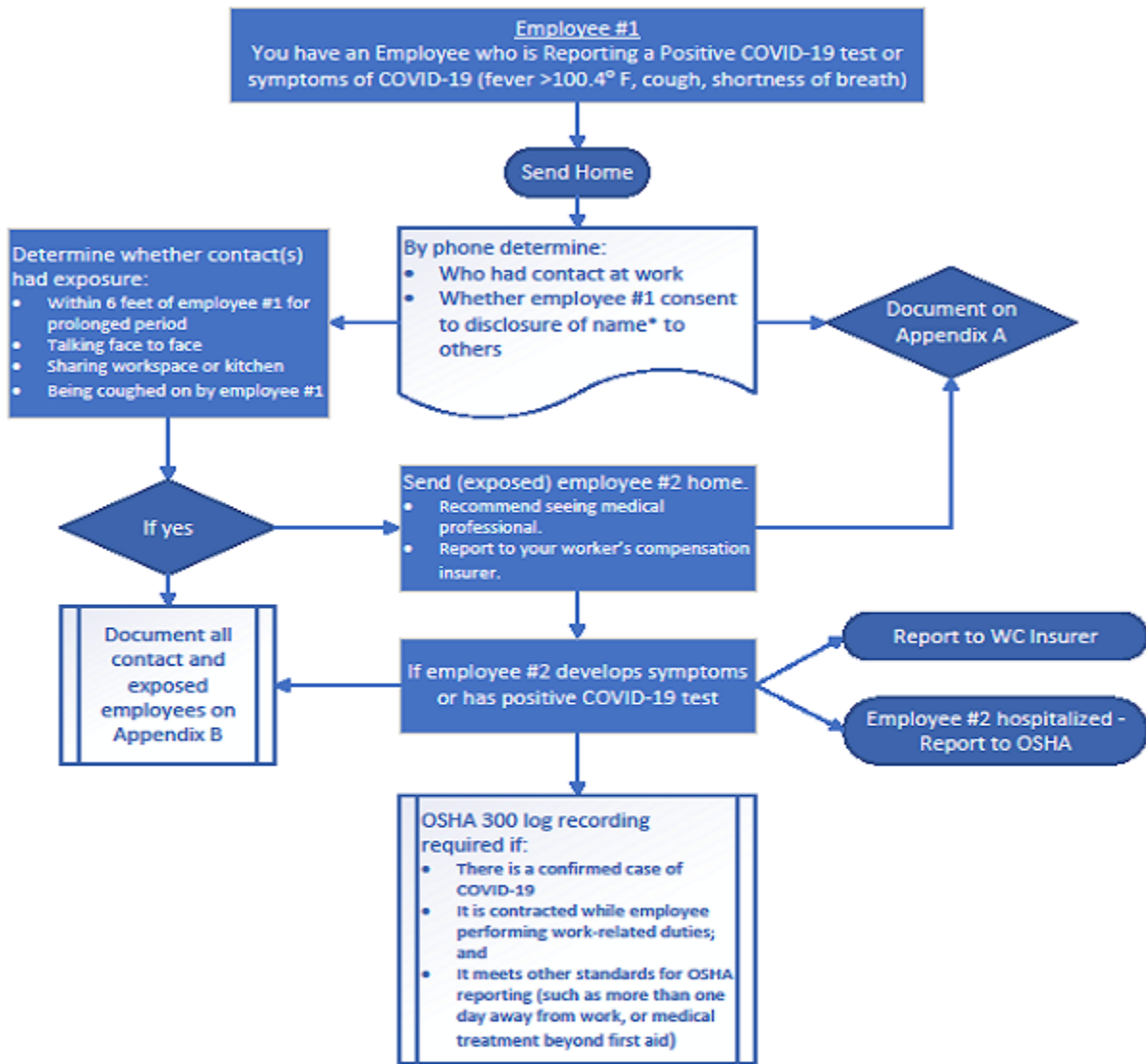
Final Thoughts



In the aftermath of an employee testing positive for COVID-19, the essential question that must be answered is whether work can continue *safely*. This answer will largely depend on the systems and procedures already in place to limit community spread of the virus and the extent to which those systems are being successfully utilized. Without effective preventative measures, a contractor's ability to respond to an outbreak on a jobsite is severely limited and possibility of shutdown is high. Partnering with workplace safety, legal, and public relations advisors early, is essential to developing a sound plan for dealing with COVID-19. This planning can help keep the project on track and is consistent with meeting your public health and contractual obligations.

Your Real Estate, Construction, and Workplace Safety professionals at Michael Best are here to help you navigate these challenging situations. Please contact any member of our team for assistance.

[Click here to access our COVID-19 Resource Center and Task Force's contact information.](#)



* Do not disclose name unless essential to investigate and warn others.

This document is prepared for general information and is not a substitute for specific advice. Please contact your Michael Best attorney regarding the specific facts and circumstances of individual matters due to the rapidly changing legal and epidemiological landscape surrounding this subject matter.

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Footer Notes:

1. If not already notified, contact local public health officials.

2. If it has been more than 7 days since the person has been at work, no additional cleaning is necessary.
3. Under the expanded Family Medical Leave Act, covered employees are eligible to take 12 weeks of paid leave for the care of a child whose school or daycare is closed due to COVID-19

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