



## **Dealing With Employees Who Become Ill in the COVID Era**

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As veterinary clinics/hospitals and other businesses throughout the state move forward to reopening in full or transitioning from curbside care to more routine office visits, issues will certainly arise for how to handle employees who become sick with COVID-19 or some other illness. Furthermore, this issue will only increase next fall when cold and flu season arrive on top of the continued COVID pandemic. Regardless of whether an employee becomes sick this summer or next fall or winter, there are certain guidelines and issues to consider for dealing with sick employees in the workplace in the COVID era.

### **Employees Staying Home if Sick and Compensation**

In the pre-COVID era, employers should always have informed employees to stay home if they were ill, particularly if they had a temperature or persistent cough and/or sneezing. However, that often was not followed, which would often lead to further sickness in the workplace. In the COVID era, this has changed significantly and likely will be adhered to more strictly.

According to the Centers for Disease Control and Prevention (CDC), in the COVID era, employers should strongly encourage employees to stay home from work by adopting the following standards for all illnesses, not just COVID-19:

- Telling employees to stay home if they have symptoms of acute respiratory illness, a fever of 100.4 degrees or higher, or signs of a fever. Employees should be fever-free without the use of medication for 24 hours before returning to work.
- Urging employees to notify their supervisor and stay home if they are sick for any reason.
- Ensuring that the company's sick-leave policies are flexible and consistent with public health guidance and that employees are aware of the policies.
- Not requiring employees with acute respiratory illness to provide a doctor's note to verify their illness or to return to work, since health care providers may be overwhelmed with requests particularly in COVID hotspots.
- Maintaining flexible policies that allow employees to stay home to care for a sick relative.

Obviously, if an employee is staying home from work because of an illness, he/she will be paid only if he/she has accrued paid time off (PTO) or sick leave to cover the period of absence. However, if an employee is either 1) advised by a health care provider to self-quarantine due to concerns related to COVID including being COVID positive, or 2) experiencing symptoms of COVID and seeking a medical diagnosis, the Families First Coronavirus Response Act (FFCRA) pay requirements will be available to the employee. All other periods of illness generally are on an unpaid basis.

### **When Should The Employee Return to Work?**

There is no clear and set answer to the question as to when an employee should return to work. This will vary depending on what is going on in your community regarding the

pandemic, as well as the circumstances of your individual workplace and the individual circumstances of the employee.

One possible policy to consider adopting regarding COVID (due to its lethal nature) is that the employee must provide your veterinary clinic/hospital with a fitness document from a health care provider confirming that the employee is no longer shedding COVID virus and thus is no longer contagious. This same type of fitness document could be requested if the employee is under a health care provider's care for the flu or other illnesses.

Additionally, the CDC has set forth two sets of return-to-work criteria for health care workers for individuals with COVID. The first is a symptom-based strategy:

- At least three days (72 hours) have passed *since recovery*, which is defined as resolution of fever without the use of fever-reducing medications.  
**AND**
- Improvement in respiratory symptoms (e.g., cough, shortness of breath)  
**AND**
- At least seven days have passed *since symptoms first appeared*.

The second is a testing-based strategy:

- Resolution of fever without the use of fever-reducing medications  
**AND**
- Improvement in respiratory symptoms (e.g., cough, shortness of breath)  
**AND**
- Two consecutive negative results from FDA-authorized nasal swab tests – at least 24 hours apart.

Your veterinary clinic/hospital could use (but is not required to) either set of criteria for return to work, or it could add or delete criteria to either strategy. The key is to make sure that whatever is adopted is carefully considered to fit your workplace, and then used on a consistent basis with all employees.

### **There is no Absolute Requirement for a 14-Day Quarantine**

Some employers are under the misperception that there is a rule requiring a 14-day quarantine from the date that symptoms first appeared. This is not accurate. However, an employer certainly could adopt such a policy – but it cannot be an absolute rule that the employee must return to work at the end of the 14 days because not every employee will be recovered in that time span.

### **Be Flexible with Sick-Leave or Other Leave Policies**

Never pressure a sick worker to return to the office prematurely. As a reminder, all employers must comply with the general duty clause of the Occupational Safety and Health Administration (OSHA) to provide a safe place for employees to work. By requiring employees to return to work prematurely (particularly with COVID, which can be fatal), it could violate OSHA regulations and put your entire workforce and/or customers at risk. Other potential liability concerns also could arise by prematurely bringing back employees who are sick.

This may mean that employees will need to be placed on unpaid personal leaves in excess of their accrued sick leave days. However, allowing some flexibility through unpaid leave will likely need to be considered increasingly in the COVID era. Again, the length of an unpaid leave will depend on many different facts involving the employee and your workplace.

## **Employees are not Obligated To Disclose If They Tested Positive for COVID**

Another misperception among some employers is that employees are required to tell them whether they tested positive for COVID-19. While many employees are willing to share that information upon receiving confirmation of a positive COVID test, they are generally not required to do so. The Equal Employment Opportunity Commission (EEOC) has issued guidance indicating that employees who report feeling ill at work, or who call in sick, may be asked questions by their employers about their symptoms to determine if they have or may have COVID-19. This guidance from the EEOC indicates that employers may ask employees to inform them of any positive COVID-19 test results, but employees are not obligated to do so. Also, do not forget that any information gathered about symptoms or a positive COVID test must be maintained on a confidential basis, and such information may not be shared with the rest of the staff except on a need-to-know basis (meaning a small number of management people).

It is anticipated by many in the legal field that employment and other legal claims involving COVID and related issues will increase as employees return to the workplace. Understanding how to address employees' sick leaves and returns from sick leaves has never been more important in both operating your business and avoiding potential claims.