Employer’s Notification Requirements of Possible COVID-19 Exposure

In the current situation, employees who come into contact with other employees may be diagnosed with COVID-19. What is an employer’s obligation to notify other potentially exposed employees?

Employers have a general duty to provide a safe workplace under Cal/OSHA and federal OSHA. The CDC advises that if an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA). Under the ADA, employers are required to maintain the confidentiality of any medical information they receive, including the name of the affected employee.

As part of that, employers should try to determine which, if any, employees were exposed to COVID-19. There are a few ways for employers to perform this “contact tracing.” First, employers might be able to coordinate with state or local health authorities for guidance and direction. This is a good first step, but in this fast-changing situation may not be possible.

Additionally, employers can, and should, investigate the employee’s schedule and work location to determine with whom the employee interacted.

Employers may also consider instituting a policy informing employees that if they are confirmed to have COVID-19, they will be requested to provide a list of other employees with whom they had close contact during the last 14 days. The content and need for such policies will vary given the nature of the workplace and its location.

Once employees are identified, employers should communicate to these employees that they have potentially been exposed to COVID-19, while maintaining the affected employee’s confidentiality. Employers should be particularly careful not to disclose the affected employee’s name.

Employees exposed to a co-worker with confirmed COVID-19 should refer to CDC guidance for how to conduct a risk assessment of their potential exposure.