

DHEC Issues Guidance to S.C. Employers on COVID-19 Exposure Scenarios

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As the number of new reported cases continues to climb in South Carolina, employers in all industries are confronted with COVID-19 related challenges. Employers look to the Centers for Disease Control and Prevention (CDC) and the South Carolina Department of Health and Environmental Control (DHEC) for guidance on issues associated with the pandemic, as well as other regulatory authorities, including the Equal Employment Opportunity Commission (EEOC). DHEC issued Interim Guidance on June 29, 2020, to assist employers when confronted with various scenarios of employees with COVID-19 exposure or confirmed infection.

This Interim Guidance differs slightly from the guidelines published by the Centers for Disease Control and Prevention (CDC) in two notable areas.

First, the DHEC Interim Guidance omits a return to work option based on the submission of two negative viral test results conducted more than 24 hours apart. Instead, the Interim Guidance advises that “negative tests results are not required” and that employees who have tested positive may return to work when:

1. 10 days have passed since their symptoms began; and
2. They are free of fever (100.4°F or greater using an oral thermometer) for 3 days without the use of fever-reducing medicines; and
3. Their other symptoms have improved.

The CDC identifies time, symptom and test-based strategies as options for ending the isolation period, but recognizes that “the decision to discontinue home isolation for persons with confirmed or suspected COVID-19 should be made in the context of local circumstances.” DHEC’s Interim Guidance does not make a distinction between viral testing and antibody testing when stating that “negative test results are not required.”

However, the EEOC has drawn a clear distinction between the two. On June 17, 2020, the EEOC issued Technical Assistance advising that employers may test employees to see if they are infected with the virus

prior to allowing their re-entry to the workplace, but may not test for antibodies pursuant to guidance from the CDC and the Americans with Disabilities Act (ADA). The CDC Interim Guidelines referenced by the EEOC are also specific to serologic (antibody) tests, not viral tests. When all the guidelines are read together, a reasonable inference to be drawn is that the DHEC Interim Guidance does not prohibit an employer from requiring an employee to submit to a viral test prior to returning to work.

Second, the DHEC Interim Guidance expands the time that an employee who is a close contact living with a COVID-19 positive person must quarantine. According to the Interim Guidance, a close contact living with a COVID-19 positive person must quarantine for an additional 7 days beyond when the positive person meets criteria for release from isolation; therefore, a minimum of 17 days. A close contact who does not live with a COVID-19 positive person must quarantine for 14 days after their last contact with the positive person. “Close contact” is defined as being within 6 feet of the other person for a period of more than 15 minutes. A close contact of a positive case should self-quarantine and is encouraged to be tested if they have symptoms at any time after day 7 from exposure if they have no symptoms. However, a negative test result does not shorten the quarantine period. In the event they are released to work sooner than the appropriate quarantine period, the Interim Guidance states the employee should report to their HR Director or supervisor so that a return to work decision can be made in consultation with DHEC.

Nexsen Pruet continues to monitor guidance from public health and other relevant regulators and experts and will provide updates as appropriate.

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