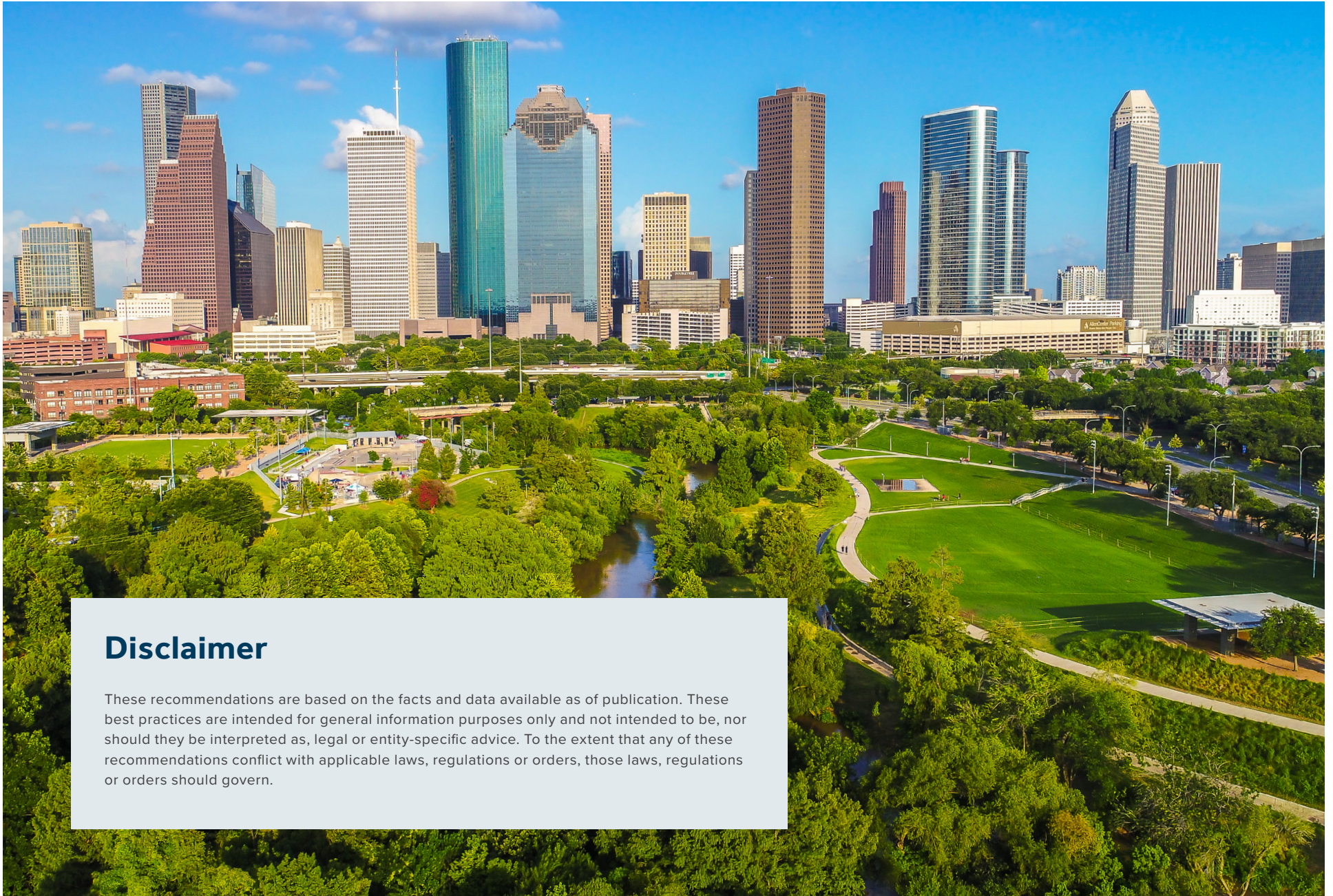# MANAGING COVID-19 CASES IN THE WORKPLACE

Disclaimer

These recommendations are based on the facts and data available as of publication. These best practices are intended for general information purposes only and not intended to be, nor should they be interpreted as, legal or entity-specific advice. To the extent that any of these recommendations conflict with applicable laws, regulations or orders, those laws, regulations or orders should govern.

OVERVIEW

HOUSTON BUSINESSES ARE TAKING RESPONSIBLE MEASURES TO CREATE AND MAINTAIN A SAFE WORK ENVIRONMENT. THESE ACTIONS INCLUDE BOTH PROACTIVE AND REACTIVE MEASURES. WHILE MUCH HAS BEEN DEVELOPED ON THE PREVENTATIVE ACTIONS BUSINESSES SHOULD TAKE, THERE REMAINS A LACK OF COMPREHENSIVE INFORMATION ON HOW EMPLOYERS SHOULD EFFECTIVELY ADDRESS CONFIRMED OR SUSPECTED COVID-19 CASES AND PREVENT FURTHER TRANSMISSION IN THE WORKPLACE.

THE GREATER HOUSTON PARTNERSHIP DEVELOPED THIS DOCUMENT TO 1) PROVIDE A STEP-BY-STEP PROCESS FOR HOW EMPLOYERS CAN RESPOND TO COVID-19 CASES; 2) ADDRESS THE ADVANTAGES AND DISADVANTAGES OF DIGITAL DATA MANAGEMENT TOOLS; AND 3) HIGHLIGHT KEY LEGAL CONSIDERATIONS.

THE PARTNERSHIP IS THANKFUL FOR THE MANY BUSINESS LEADERS AND PUBLIC HEALTH EXPERTS FOR THEIR GUIDANCE IN DEVELOPING THIS DOCUMENT.

PROCESS FOR MANAGING CONFIRMED OR SUSPECTED COVID-19 CASES IN THE WORKPLACE

BASED ON A REVIEW OF PUBLIC HEALTH AND INDUSTRY GUIDANCE, THERE ARE FOUR COMMON STEPS RECOMMENDED FOR ORGANIZATIONS TO MANAGE CONFIRMED OR SUSPECTED CASES.

1 IDENTIFY

A confirmed or suspected case of COVID-19 is identified either through symptoms reported during daily screening or an employee's self-reported symptoms or a positive polymerase chain reaction (PCR) – also called "swab" – test result. The Centers for Disease Control and Prevention (CDC) recommends workplaces conduct daily screening of employees upon arrival for COVID-19 symptoms. The Equal Employment Opportunity Commission (EEOC) has also issued guidance permitting employers to take employee temperatures and to test employees for COVID-19. According to the CDC, suspected cases of COVID-19 involve persons with symptoms consistent with COVID-19, which include fever or chills, cough, and shortness of breath.

The company representative(s) in charge of managing employees with symptoms or positive cases will be notified by the employee or the screener. The company should designate representatives who are trained in employee privacy issues and maintaining sensitive health-related information. Typically, this is a Human Resources employee or a trained manager. The employer should also designate if there are additional staff who need to know of the employees' COVID-19 symptoms or test results, while not needing to disclose the identify of the individual, so the employer can take appropriate actions within their organizations.

The company representative(s) will be responsible for executing the remaining steps. Efforts should be taken to maintain confidential documentation of a confirmed or suspected COVID-19 case. If an organization plans to maintain a database, it must maintain all medical records in files apart from regular personnel files to help ensure confidentiality and should consider using employee ID numbers, instead of names. Management should also develop clear policies on who has access to the information outside of the designated company representative(s), how the information will be used and when the information will be purged. These policies should be communicated to all employees.

2 ISOLATE

The employee is sent home and asked to isolate or quarantine until it is safe to be around others. A 14-day period is common, but a determination on the duration for isolation or quarantine varies as described by the CDC here and here. If the employee is unable to immediately leave the workplace, he/she should be isolated until able to travel home. All affected workplace areas will need to be cleaned and disinfected. The management team will need to determine the severity of exposure to physical spaces and surfaces to justify decisions such as an emergency shutdown, or if a limited threat, only temporarily limiting spaces for entry to allow for cleaning and disinfecting.

If the employee with a confirmed or suspected case is already at home and has not been in the workplace for the past 14 days and has not been in close contact with another work-related contact, no further action is needed other than offering support and following-up on symptoms to determine when it is safe to return to the workplace.

What is a "close contact"?

A "close contact" is defined by the CDC as: a) being within approximately six feet of a COVID-19 case; or b) having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on) starting from 48 hours before illness onset until the time the individual was isolated. Definitions vary on the length of time that is considered prolonged exposure, but 15 minutes of close exposure can be used as an operational definition per the CDC. Since the definition is evolving, visit the CDC website regularly to confirm the latest definition of "close contact."

3 INVESTIGATE

The company representative interviews the employee to identify his/her close contacts that were work-related starting from 48 hours before he/she began experiencing symptoms until the time the individual was isolated at home. It is up to the individual to inform their local health department and his/her personal (non-workplace related) contacts may have been exposed.

Employers must determine who is at risk contracting the illness and consider any possible work-related contacts, including those outside of the office, plant or any facility. Possible contacts include clients or vendors that may have been exposed or infected.

Some companies have employees proactively maintain a daily log of work-related interactions so that the information will be readily available in case their contacts are needed. While this may be considered tedious, it is a proactive step that will prove critical in the event of a work-related exposure. Additionally, gathering full and accurate information may be difficult when the employee is ill. Although maintaining a daily log of contacts is best practice, it may not be practical in many settings, particularly for employees who interact with a high volume of clients and customers. To simplify the daily log, employees can limit their log to contacts where interaction occurred within six feet for more than 15 minutes.

Companies may want to review seating charts, security video tapes, a calendar of meetings and meeting attendee lists as prompts for discussions with the employee or, in the case of an employee who is too ill to provide assistance, as an alternative to discussions with the employee regarding contacts.

Information to collect to determine close contacts. The more specific the responses, the more helpful.

i. When did the interaction occur?
ii. Who did you meet?
iii. Was the interaction internal or with external clients/customers?
    1. If external, please provide their email address and/or phone number.
iv. Where did the interaction occur?
v. What was the nature of the interaction?
    1. Were you within six feet of each other?
    2. How long did the interaction last?
    3. Were face coverings worn?
    4. Were any symptoms present at the time of contact?

4 INFORM

The designated company representatives will determine which of the employee's work-related contacts are considered "close contacts," which is someone who was within six feet of the confirmed or suspected case for 15 minutes or longer or came into direct contact with infectious secretions of a COVID-19 case.

While protecting the identity of the employee, the company representative(s) will inform the close contacts of their potential exposure and provide guidance on next steps. These steps include:

- Stay home until 14 days after last potential exposure and maintain social distance (at least six feet) from others at all times. Companies should consider adjusting paid sick leave (PTO) policies. Employers should remove disincentives from people self-reporting illnesses or adhering to a request to stay home if determined a close contact of a confirmed or suspected case. For employers covered by the Families First Coronavirus Response Act (FFCRA), employees required to stay home due to potential exposure to COVID-19 may qualify for benefits under the paid sick leave provisions of the FFCRA.

- Self-monitor for symptoms
    i. Check temperature twice a day
    ii. Watch for fever of 100.4°F or higher, cough, shortness of breath, chills, muscle pain, headache, loss of smell or taste.
- Avoid contact with people at higher risk for severe illness.
- If symptoms develop, recommend the individual follow CDC guidance. The company representatives will then need to begin the process of investigating this individual's work-related close contacts and informing them of potential exposure.

The company representative(s) should communicate the criteria for returning to work and conduct follow-up interviews with the employee and his/her work-related close contacts to indicate when they can return to the workplace. In determining when an employee can return to work, CDC guidelines should be consulted for their most current recommendations.

The company representative(s) should document each notification of a close contact and ultimate resolution of each case (e.g., symptoms did not develop following 14 days of potential exposure). All close contacts should be informed if an employee who reported symptoms receives a positive or negative test result.

Businesses should consider informing all employees of a confirmed or suspected case while not disclosing the individual's identity. General notice allows employees to monitor themselves for symptoms and seek treatment if needed. While this could create a heightened sense of anxiety among employees, it is also likely that information would spread about a fellow coworker with a confirmed or suspected case, which would create distrust with management for not sharing information that could impact their health.
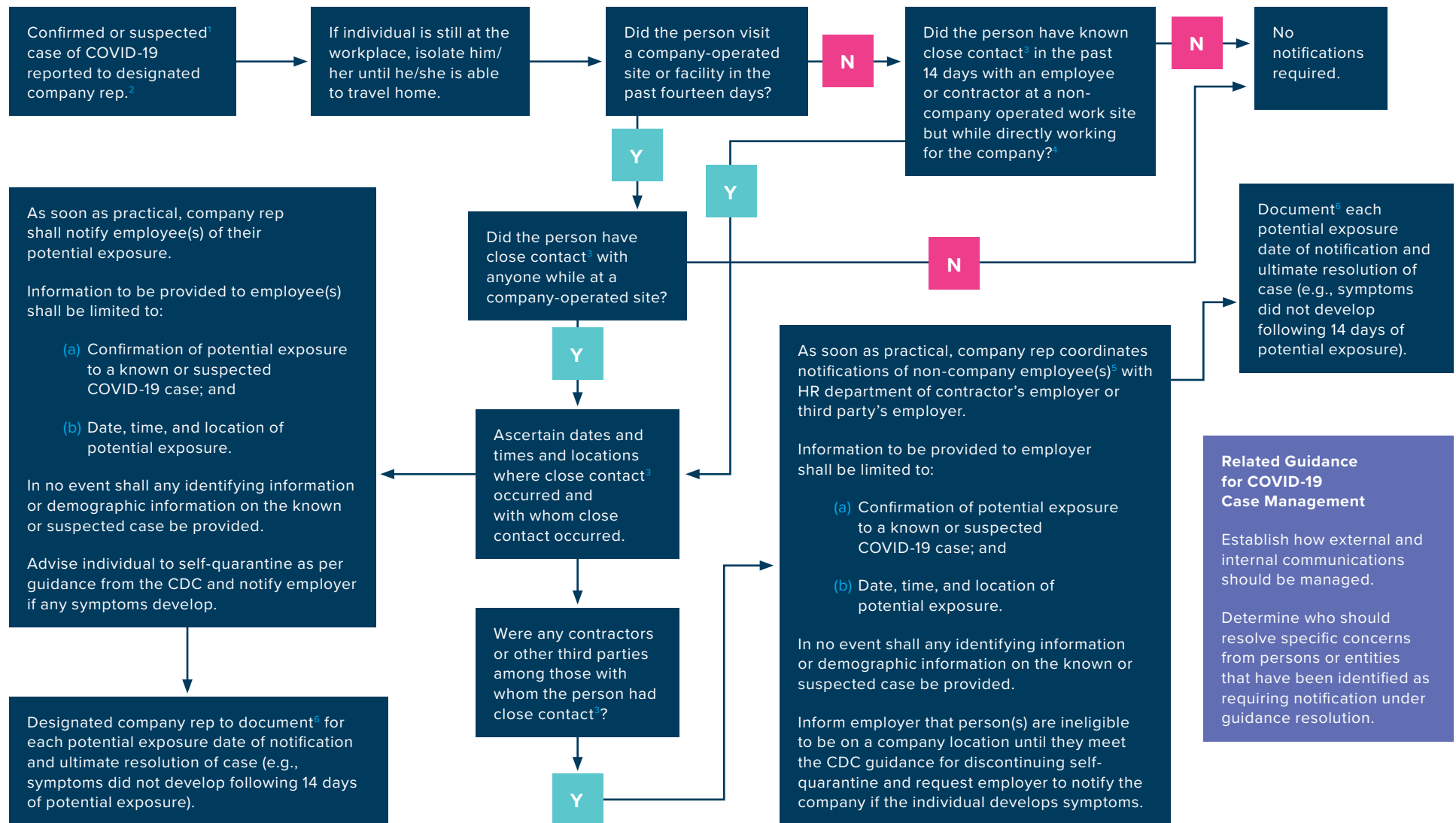
However, the employer may inform its employees that while there is a known or suspected case in the workplace, no further action is needed on their part unless they have already been notified that they were a close contact. Businesses that maintain leases on office space should also determine what information their landlords expect them to disclose.

Concern and compassion for those infected or in fear of being infected is critical. Employees will be concerned for their own health as well as for the health of their own families. Employers should also determine what disease management benefits they can provide and inform employees quickly. Employers may want to consider providing free employee screening for the disease, time off to seek medical attention, the ability to telecommute or other options until the disease is contained and the threat eliminated. Constant communication to employees both in the office and at home will help alleviate concern and keep information truthful.

The four steps of Identifying, Isolating, Investigating and Informing reflect a general process for managing COVID-19 cases in the workplace. Every business will need to modify and adapt these recommended steps based on the nature of their workplace and available resources.

For businesses who work closely with contractors or third-party vendors, the following flowchart provides a useful summary of the current best practices.

COVID-19 NOTIFICATIONS FLOWCHART FOR COMPANIES WITH CONTRACTORS AND THIRD-PARTY VENDORS

Confirmed or suspected[1] case of COVID-19 reported to designated company rep.[2]

If individual is still at the workplace, isolate him/her until he/she is able to travel home.

Did the person visit a company-operated site or facility in the past fourteen days?

N

Did the person have known close contact[3] in the past 14 days with an employee or contractor at a non-company operated work site but while directly working for the company?[4]

N

No notifications required.

Y

Y

Did the person have close contact[3] with anyone while at a company-operated site?

N

Document[6] each potential exposure date of notification and ultimate resolution of case (e.g., symptoms did not develop following 14 days of potential exposure).

As soon as practical, company rep shall notify employee(s) of their potential exposure.

Information to be provided to employee(s) shall be limited to:

    (a) Confirmation of potential exposure to a known or suspected COVID-19 case; and

    (b) Date, time, and location of potential exposure.

In no event shall any identifying information or demographic information on the known or suspected case be provided.

Advise individual to self-quarantine as per guidance from the CDC and notify employer if any symptoms develop.

Y

Ascertain dates and times and locations where close contact[3] occurred and with whom close contact occurred.

As soon as practical, company rep coordinates notifications of non-company employee(s)[5] with HR department of contractor's employer or third party's employer.

Information to be provided to employer shall be limited to:

    (a) Confirmation of potential exposure to a known or suspected COVID-19 case; and

    (b) Date, time, and location of potential exposure.

In no event shall any identifying information or demographic information on the known or suspected case be provided.

Inform employer that person(s) are ineligible to be on a company location until they meet the CDC guidance for discontinuing self-quarantine and request employer to notify the company if the individual develops symptoms.

Were any contractors or other third parties among those with whom the person had close contact[3]?

Y

Designated company rep to document[6] for each potential exposure date of notification and ultimate resolution of case (e.g., symptoms did not develop following 14 days of potential exposure).

Related Guidance for COVID-19 Case Management

Establish how external and internal communications should be managed.

Determine who should resolve specific concerns from persons or entities that have been identified as requiring notification under guidance resolution.

Notes

[1] According to the CDC, suspected cases of COVID-19 involve persons with symptoms consistent with COVID-19 which include fever or chills, cough, and shortness of breath.

[2] The designated company representative(s) for managing positive or suspected employee cases is responsible for the remaining steps unless otherwise noted.

[3] A "close contact" is defined by the CDC as: a) being within approximately six feet of a COVID-19 case; or b) having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on) starting from 48 hours before illness onset until the time the individual was isolated. Definitions vary on the length of time that is considered prolonged exposure, but 15 minutes of close exposure can be used as an operational definition per the CDC. Since the definition is evolving, visit the CDC website regularly to confirm the latest definition of "close contact."

[4] In cases where a potential exposure occurred in a non-company operated facility (e.g., a chartered vessel), the company shall not be involved in making notifications to non-employees, to include contractors (with the exceptions noted in footnote 5 below), but may confirm that such notifications were made by the operator of the non-company owned facility.

[5] Agency contractors (e.g., contingent workers that fill traditional company roles) and persons for whom employment details are unknown (e.g., a self-employed consultant) shall be notified in the same manner as company employees.

[6] Efforts shall be taken to maintain the confidentiality of documentation of a confirmed or suspected COVID-19 case and the individual's identity, but the identity may be provided to public health agencies.

Contact Tracing by Public Health

All COVID-19 test results are reported to public health authorities. Per Governor Abbott's Executive Order issued on March 24, 2020, "every public or private entity that is utilizing an FDA-approved test for…COVID-19…shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative." As a result, public health contact tracers may reach out to the individual who was tested to identify potential contacts and exposure locations throughout the community. While participation in this process is completely voluntary, it is encouraged to prevent further transmission of the virus. If a public health agency requests the identity of an employee who has tested positive for COVID-19, the employer may disclose that information. Additionally, the U.S. Equal Employment Opportunity Commission now advises that an employer may release an employee's identity to a public health agency when it learns that the employee has COVID-19. Employers are encouraged to take this action because of the critical role they can play in addressing community transmission as they are likely aware of confirmed COVID-19 cases ahead of public health entities. To share information about work-related cases in the City of Houston or Harris County, please contact the City of Houston Health Department Epidemiology and Disease Reporting Line at (832) 393-5080 or Harris County Public Health at (832) 927-7575. The public agency will request contact information about any positive cases, contacts that may have been identified in the workplace, and any other information that the employer can provide that will assist with the case investigations and contact tracing activities.

Although test results are reported to the Texas Department of State Health Services (DSHS), the individual employee can also share their information with Texas Health Trace, an online system created by DSHS for any Texan who has tested positive for COVID-19, has symptoms, or thinks they have been exposed to someone who tested positive for COVID-19. After signing up with Texas Health Trace, a contact tracer from the state health department may reach out to the individual to request information about contacts. Information will be kept completely private and used for public health purposes only.
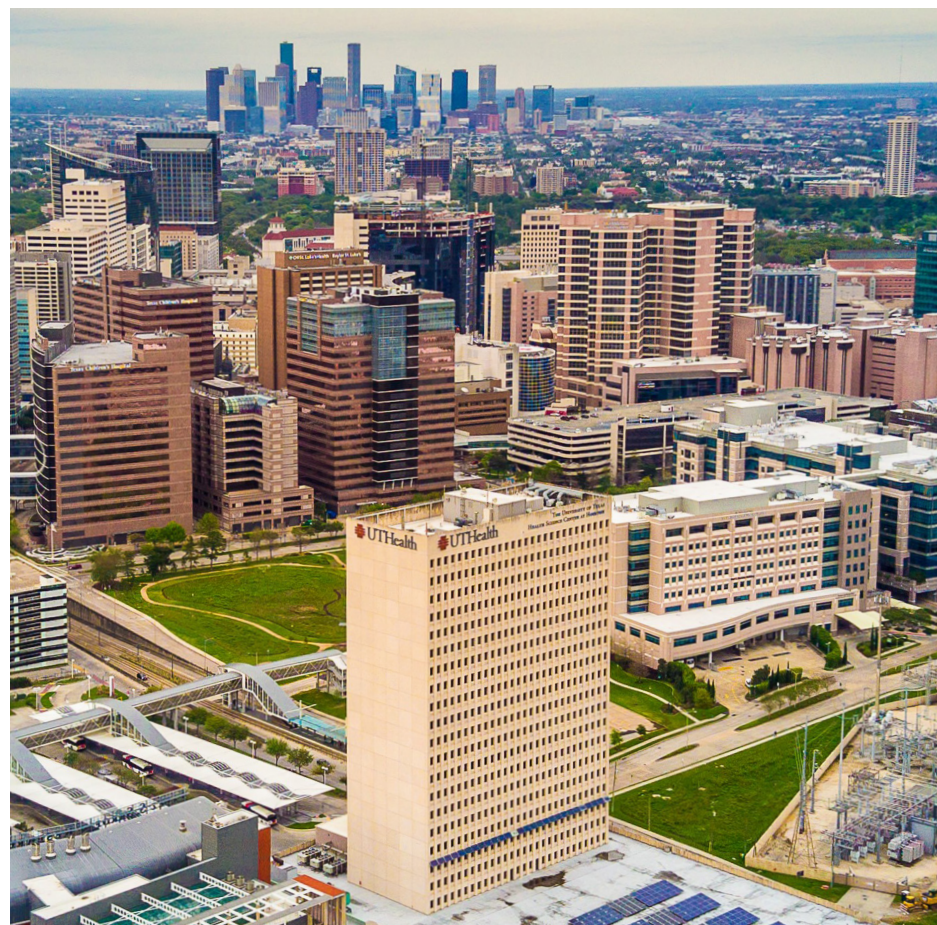
DIGITAL TOOLS FOR DATA MANAGEMENT

Digital tools for data management can help facilitate or automate key pieces of this process to aid in tracking contacts and monitoring outcomes. Digital tools vary in purpose, features, and complexity, but they can add value by:

- Improving the efficiency and accuracy of data management and automating tasks such as capturing information from badging systems and daily symptom screening reports

- Reducing the burden of manual data collection from staff by allowing electronic self-reporting from cases and contacts

- Using location data and proximity tracking systems to identify community contacts unknown to the case to discover possible exposure

However, a one-size-fits-all technology solution is unlikely. The usefulness of investing in a digital tool will heavily depend on broad user adoption and accuracy of information.

Some factors to consider when deciding on utilizing a digital tool for data management include:

Voluntary enrollment. Do not make use of the technology compulsory. Allow for voluntary adoption by employees.

Data privacy and safety. Since movement or contact profiles could reveal private or personally identifiable information, develop guidelines for obtaining the minimum required information. The tool should minimize the collection of data and anonymize and aggregate data where possible. The app developer should encrypt and restrict access to data storage and commit to using individual data solely for purposes of COVID-19 response.

Data lifecycle. Establish clear conditions with the app developer for how and when data will be deleted and communicate these conditions in the user consent process.

BEYOND PROCESS: A REAL PERSPECTIVE FROM HR

There is a lot of discussion about contact tracing and managing COVID-19 cases in the workplace. Businesses are considering solutions, processes, and resources, all of which are critical to reopening and reflect none of the emotional investment of contact tracing.

At a high level, contact tracing entails understanding what contacts a diagnosed individual has had and informing those individuals that they had contact with someone with COVID-19 and need to take appropriate action to quarantine and monitor for symptoms. The process is straightforward but does not reflect very human reactions. Someone with COVID-19 might be very sick and very afraid. They may already be isolated and just need comfort. They may need help navigating an unfamiliar healthcare system that is also pretty scary (are they going to get sicker by going to the ER is a really common question). They may not feel well enough to pull together their list of contacts over the previous days. Asking a sick person to provide details on people with whom they had contact, for how long, and in what space is asking a lot. All of this takes time and sensitivity under the best of circumstances. When someone is panicked about their health, or nervous because they may have exposed colleagues, family, or friends, they need support.

The outreach to individuals who had meaningful contact is also straightforward… until it isn't. At a high level, you're telling them they had contact with someone who is sick (with a disease that can produce no symptoms or kill you), and they need to quarantine and monitor for symptoms. Some people hear that and are totally comfortable. Others are terrified, have dozens of questions (some of which you can't answer because science hasn't figured things out yet, or you can't divulge personal information about the sick individual). These people also need a lot of support.

We're in a different place than we were a few months ago, and there's a greater level of awareness of COVID-19. That familiarity may bring people who are affected some comfort, but it's a safe bet to say that the process will still entail much more than quick emails from HR.

-Human Resources manager at a professional services firm

KEY LEGAL CONSIDERATIONS FOR EMPLOYERS

Disclaimer

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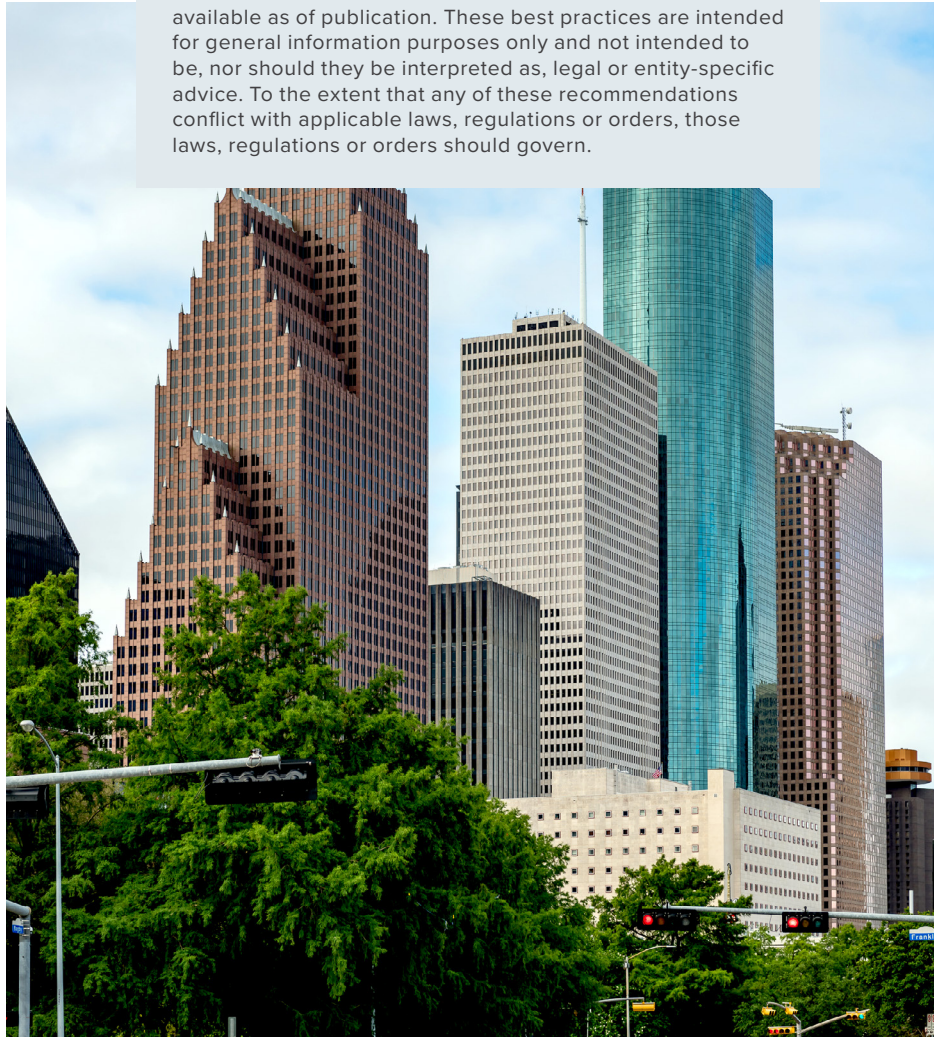
What are employers allowed to do when identifying confirmed or suspected COVID-19 cases and notifying close contacts?

Guidance from the Occupational Safety and Health Administration (OSHA) advises all employers to develop and implement policies and procedures for prompt identification and isolation of employees who become ill in the workplace. Those policies and procedures should include, among other things, directing employees to stay at home or return home and self-monitor for symptoms of the virus and providing a process for employees to notify employers if they are developing symptoms or have been diagnosed. Employers should inform co-workers who have had close contact with a confirmed or suspected case while maintaining the affected employee's confidentiality.

Employers have an obligation to not reveal the identity of the individuals with a positive test and should take all reasonable steps to avoid revealing the employee's identity directly or indirectly, in compliance with the Americans with Disabilities Act (ADA) and OSHA guidance. Employees have a reasonable expectation to privacy of all medical information and any leaves of absence or accommodations they receive. Employers must not provide names of those infected unless there is a business need to provide this information, such as to a specific manager of an employee who is infected. One exception, as advised by the EEOC, is that an employer may release an employee's identity to a public health agency when it learns that the employee has COVID-19.

Are employers allowed to screen employees for COVID-19 symptoms and request employees to be tested for COVID-19?

According to the U.S. Equal Employment Opportunity Commission (EEOC), employers are allowed to screen employees physically entering the workplace. During the pandemic, an employer is allowed to ask employees if they are experiencing COVID-19 symptoms. Current EEOC guidance also permits employers to require employees to be tested if they have a reasonable belief that the employee may have COVID-19. However, employers must ensure that they protect the confidentiality of any medical information they receive from or about an employee. Please note that a COVID-19 viral test to determine if someone has an active case of COVID-19 differs from an antibody test. According to the EEOC, it is not allowed under the ADA to require antibody testing before allowing employees to re-enter the workplace. In light of the CDC's Interim Guidelines that antibody test results "should not be used to make decisions about returning persons to the workplace," an antibody test at this time does not meet the ADA's "job related and consistent with business necessity" standard for medical examinations or inquiries for current employees. Click here for more EEOC guidance.

What questions are employers allowed to ask when screening for COVID-19 symptoms?

The EEOC released guidance to employers regarding employers' ability to ask COVID-19 screening questions. Employers are permitted to ask questions about an employee's medical condition in order to protect the workforce from COVID-19. Employers must be careful, however, to limit questions to whether employees are experiencing flu-like/COVID-19-like symptoms, as inquiries beyond that may become problematic. The ADA places limitations on employer's pursuing disability-related inquires and medical examinations of employees. Complications from many illnesses, including flu-like illnesses, can rise to the level of a disability, so questions designed to determine if any employee has a compromised immune system, or might be more likely to suffer complications of a particular illness, are not permissible. Under the ADA, employers are required to maintain confidentiality of any employee medical information they received, including the name of the affected employee. However, the EEOC now advises that an employer may release an employee's identity to a public health agency when it learns that the employee has COVID-19.

Are employers required to record and/or report confirmed COVID-19 cases?

Many employers with more than 10 employees are required to keep a record of serious work-related injuries and illnesses. Certain low-risk industries are exempted. Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and thus employers are responsible for recording cases of COVID-19 if:

1. The case is a confirmed case of COVID-19;
2. The case is work-related as defined by OSHA;
3. The case involves one or more of the general recording criteria set forth by OSHA.

More on OSHA's requirements for recording cases here. While employers are not required to report confirmed COVID-19 cases to public health agencies, it is encouraged that they take this step to prevent community transmission. Additionally, the recent EEOC guidance has allowed for employers to release an employee's identity to public health agencies.

Are employees required to inform their employer of symptoms consistent with COVID-19 or a positive COVID-19 test result?

Employees are generally not obligated to disclose if they have tested positive for COVID-19. However, the EEOC has stated that employers may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19. Additionally, the employer can bar an employee from entering the workplace if they refuse to answer questions about COVID-19 symptoms or a positive test result. Any such measure must be enforced consistently.

While no specific federal law imposes an obligation on employers to enact policies prohibiting workplace exposure to COVID-19, the General Duty Clause of the Occupational Safety and Health Act requires employers to provide a work environment "free from recognized hazards that are causing or are likely to cause death or serious physical harm." OSHA expects employers to take reasonable measures to protect workers from workplace exposure to COVID-19. In addition, OSHA has published an alert providing guidance on social distancing at work and alerts for specific industries (including nursing homes, retail pharmacies, restaurants, dental practitioners, construction companies and others). Although these guidance documents do not have the force of law, employers who implement OSHA's suggested practices will be in a better legal position in the event of an OSHA inspection or complaint.

What can an employer do to encourage self-reporting of symptoms or test results?

Employers should explain the importance of self-screening and being forthright in reporting symptoms. The practice of monitoring and notifying is a key strategy for preventing further spread of COVID-19. Employers should also be transparent about what is done with employee information and the confidentiality measures in place to prevent an individual's identity from being shared beyond the team involved in monitoring and notifying. Employers must be clear about who has access to the employee's information.

Employers should also consider revising, as feasible, their leave and paid time off policies to allow employees to use those benefits as necessary during this pandemic. In addition, employers covered by the FFCRA are required to provide paid sick leave to employees under many circumstances related to COVID-19. Employees are more likely to self-report if they know their income will continue while they recover from COVID-19 safely at home or elsewhere.

GREATER HOUSTON PARTNERSHIP COVID-19 RESOURCES

THROUGH THE COVID-19 PANDEMIC, EMPLOYERS ARE NAVIGATING PROFOUND LEVELS OF UNCERTAINTY. WHILE EVERY DAY BRINGS NEW DEVELOPMENTS AND CHALLENGES, THE GREATER HOUSTON PARTNERSHIP HAS DEVELOPED A SUITE OF TOOLS AND RESOURCES TO SUPPORT THE BUSINESS COMMUNITY. CLICK THE LINKS BELOW TO LEARN MORE.

GENERAL CORONAVIRUS RESOURCES

BUSINESS RECOVERY CENTER

INDUSTRY BEST PRACTICES FOR REOPENING

REOPEN HOUSTON SAFELY REPORT

MONITORING DASHBOARD

WORK SAFE PRINCIPLES