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CDC REVISES COVID-19 HOME ISOLATION/RETURN TO WORK STANDARDS FOR NON-HEALTHCARE PERSONNEL

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Based on newly aggregated data and evidence and the need to preserve laboratory testing resources, the CDC earlier this month revised its recommendations for non-healthcare personnel to discontinue home isolation, which includes returning to work. The CDC now recommends a purely-symptom-based (*i.e.*, non-test-based) approach of permitting an individual recovering from a mild to moderate case of COVID-19 to discontinue home isolation (return to work) when all of the following conditions are met:

- 10 days have passed since the onset of symptoms, and
- 24 hours have passed since the abatement of fever without fever-reducing medication, and
- 24 hours have passed since other symptoms began improving.

Discontinuing a test-based return-to-work strategy should eliminate periodic difficulties employees may experience in locating testing resources and enduring unexpectedly long turnaround times, and should also relieve an employer's concern for how genuine the employee's effort to locate testing may have been. Moving away from a test-based return-to-work approach will also eliminate the barriers that "persistently positive" employees have faced in attempting to return to work. Evidence is growing that there is a "persistently positive" subset of the population that is incapable of transmitting the virus but continues to test positive for COVID-19 on the PCR test.

You can read the CDC recommendations on discontinuing home isolation [here](#), and the CDC summaries on the background reports on which it revised its recommendations [here](#).

From an employment law perspective, the EEOC has not revised its [overall guidance that testing is generally permissible](#) (Question 6). However, deferring to current CDC guidance on a symptom-based return-to-work strategy would reduce any potential legal exposure that might arise from the use of a test-based return-to-work strategy. (Remember also that the EEOC has already indicated that antibody tests are not permitted). Additionally, while we do not expect the EEOC to initiate any sort of enforcement action based on return-to-work testing, we would not be surprised to see a formal change to guidance in the coming weeks.

Finally, this return-to-work guidance alone cannot be used to shorten an employee's entitlement to EPSL that is supported by a physician's instruction for that employee to quarantine for a longer period.

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