

## Healthcare Goes Viral: Guidelines for Returning to the Front Lines

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In a time when most employees are questioning when or if they will be able to return to work, healthcare practitioners find themselves increasingly in demand. To assist with the need for an increased healthcare workforce, and in an effort to mitigate the potential, attendant spread of COVID-19 in the healthcare setting, the Centers for Disease Control and Prevention (CDC) recently issued [guidance](#) to public health officials and state and local health departments regarding the usage of healthcare personnel (HCP) with suspected or confirmed COVID-19 infections in the workplace.

### **Symptomatic HCP With Suspected or Confirmed Cases**

The CDC recommends using a test-based strategy for HCP with suspected or confirmed COVID-19 infections. Under this method, HCP are excluded from the workplace until:

1. The HCP no longer has a fever without the use of fever-reducing medications;
2. The HCP's respiratory symptoms have improved; and
3. The HCP received a negative result from an FDA Emergency Use Authorized molecular assay for COVID-19. The CDC recommends that this testing include at least two consecutive nasopharyngeal swab specimens collected more than 24 hours apart.

If this test-based strategy cannot be used, the CDC recommends an alternative, non-test-based strategy. Under this strategy, HCP are excluded from the workplace until at least 72 hours have passed since recovery. In this sense, "recovery" is defined as:

1. Resolution of fever without the use of fever-reducing medications;
2. Improvement in respiratory symptoms; and
3. At least seven days have passed since symptoms first appeared.

### **Asymptomatic HCP**

HCP with laboratory-confirmed COVID-19 and who have been asymptomatic should be excluded from the workplace for 10 days following the date of their positive COVID-19 test, assuming there has been no new symptoms. If it is determined that the HCP's symptoms are attributable to a non-COVID-19 condition, a return to work should be based on criteria for that condition.

HCP who are asymptomatic, but have been exposed to patients with confirmed COVID-19, should be monitored based on their risk classification. HCP who have had prolonged close contact with a COVID-19 positive patient that was also wearing a facemask fall into either the medium- or low-risk category. If the HCP was not wearing any personal protection equipment (PPE), or simply not wearing a facemask or respirator at the time of contact, they fall into the medium-risk category. If the HCP was wearing a facemask, but did not have eye protection, gloves or a gown at the time of contact, they fall into the low-risk category.

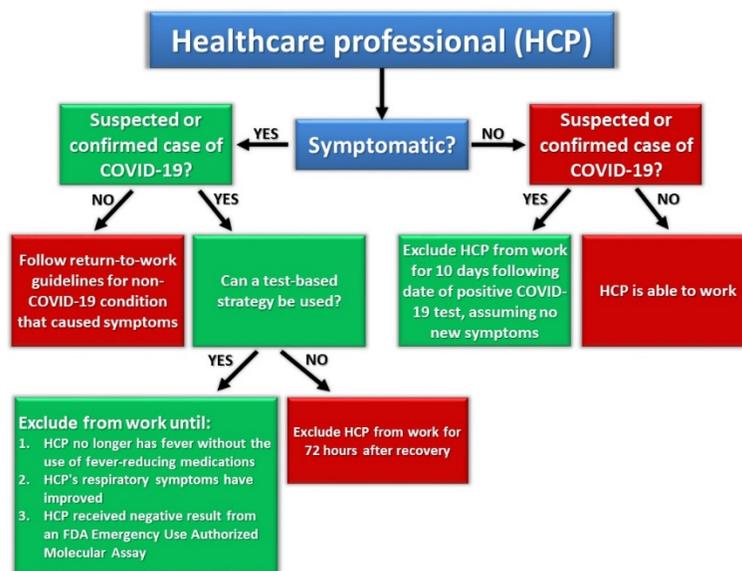
HCP who have had prolonged close contact with a COVID-19 positive patient who **was not** wearing a facemask fall into either the high, medium, or low-risk category. If the HCP was not wearing any PPE or simply not wearing a facemask or respirator at the time of contact, they fall into the high-risk category. If the HCP had all of the appropriate PPE, except eye protection at the time of contact, they fall into the medium-risk category. If the HCP was wearing all of the recommended PPE except a gown or gloves at the time of contact, they fall into the low-risk category.

HCP who fall into the low-risk category should perform self-monitoring with delegated supervision until 14 days after the last potential exposure. They are not restricted from work. They should check their temperature twice daily and remain alert for symptoms consistent with COVID-19. If they develop symptoms consistent with COVID-19, they should immediately self-isolate and notify their local or state public health authority or healthcare facility promptly.

HCP who fall into the medium- or high-risk categories should undergo active monitoring, including restriction from work in any healthcare setting until 14 days after their last exposure. If they develop any symptoms consistent with COVID-19, they should immediately self-isolate and notify their local or state public health authority and healthcare facility promptly.

### Return to Work Practices and Restrictions for all HCP following Confirmed or Suspected COVID-19

Following a return to work by any of the foregoing types of HCP, the CDC recommends the HCP wear a facemask at all times while in the healthcare facility until all symptoms are resolved or until 14 days after the onset of illness, whichever is longer. Specifically, HCP should wear a surgical facemask at all times and an N95 facemask when caring for COVID-19 patients. Additionally, HCP should be restricted from contact with severely immunocompromised patients until 14 days after onset of the illness. Finally, the CDC recommends HCP self-monitor for symptoms and seek reevaluation from occupational health if respiratory symptoms recur or worsen.



### Mitigating Staff Shortages

The CDC acknowledges that healthcare facilities may experience staffing shortages due to COVID-19 and [offers guidance](#) on how those facilities can develop plans to allow asymptomatic HCP who have had unprotected exposure to the virus to continue to work. The CDC recommends allowing those HCP to continue working as long as they report temperatures and absence of symptoms each day before starting work. Additionally, those HCP should wear a facemask while at work for 14 days after the exposure event. If these HCP develop mild symptoms consistent with COVID-19, they must cease patient care activities and notify their supervisor prior to leaving work. Such individuals should then be prioritized for testing.

If shortages continue, the CDC recommends healthcare facilities consider implementing criteria to allow HCP with suspected or confirmed COVID-19 who are well enough to work, but have not met all of the return-to-work criteria, to work. These HCP should be restricted from contact with severely immunocompromised patients. Additionally, facilities should consider prioritizing these HCPs duties in the following order:

- Allow HCP with suspected or confirmed COVID-19 to perform duties where they do not interact with others, such as telemedicine services;
- Allow HCP with confirmed COVID-19 to provide direct care only for patients with confirmed COVID-19;
- Allow HCP with confirmed COVID-19 to provide direct care for patients with suspected COVID-19; and
- As a last resort, allow HCP with confirmed COVID-19 to provide direct care for patients **without** suspected or confirmed COVID-19.

Employers of HCPs with suspected or confirmed COVID-19 who are considering permitting them to return to the workplace must still comply with all applicable employment laws. For example, other employees (not limited to HCP employees) who are not suspected or confirmed to have COVID-19, and who fall into known high-risk categories, may seek an accommodation that they be permitted to avoid working with or around a HCP with suspected or confirmed COVID-19. This will, in turn, trigger the employer's obligation to engage in the interactive process. In addition, employers of HCPs with suspected or confirmed COVID-19 who return to the workplace must still comply with the United States Department of Labor's Occupational Safety and Health Administration's (OSHA) guidelines, standards, and regulations insofar as they are still obligated to provide a safe and healthful workplace. OSHA's recently issued [interim guidance](#) to employers to combat the supply shortages of N95 filtering face piece respirators and to comply with the respiratory protection standard (29 CFR §1910.134). Given the novel and complex return-to-work issues facing employers of HCPs with suspected or confirmed COVID-19, employers who need to permit such HCPs to return to the workplace should consult an employment attorney for further guidance.

### **Additional Considerations for Nursing Homes and Assisted Living Facilities**

As a supplement, the CDC issued additional [guidance](#) for use in nursing homes (NHs) and assisted living facilities (ALFs) due to the apparent risk of COVID-19 spreading and affecting residents. The CDC recommends that NH and ALF personnel wear facemasks at all times while they are in the facility, regardless of whether they have had suspected or confirmed COVID-19. Moreover, the CDC recommends universal use of all recommended PPE by NH and ALF personnel when only a single case of COVID-19 has been identified in the facility.

The CDC also recommends that NH and ALF personnel receive training in the use and removal of PPE in order to avoid inadvertent contamination. Further, NHs and ALFs should implement sick leave policies that are flexible and non-punitive to encourage personnel with suspected COVID-19 symptoms to stay home. It is also recommended that NHs and ALFs create an inventory of all personnel who provide care in the facility to determine which services are non-essential and can be delayed. The CDC has also recommended that NHs and ALFs consider designating one central point of entry to the facility and establishing visitation hours if visitation must occur, to keep COVID-19 from entering the facility. The foregoing is merely one of numerous issues facing NHs and ALFs during the COVID-19 crisis, and this and other issues are addressed in "[A Framework for Mitigating Liability Claims in Eldercare Facilities](#)".

Recommendations for returning to work during the COVID-19 crisis is a constantly-changing and novel issue. White and Williams attorneys continue to monitor recommendations for employees in the healthcare sector and beyond. If you have any questions or would like additional information, please contact Daniel J. Ferhat ([ferhatd@whiteandwilliams.com](mailto:ferhatd@whiteandwilliams.com); 215.864.6297), Geoffrey F. Sasso ([sassog@whiteandwilliams.com](mailto:sassog@whiteandwilliams.com); 215.864.6245), Victoria Fuller ([fullerv@whiteandwilliams.com](mailto:fullerv@whiteandwilliams.com); 617.748.5211), Alison Russell ([russella@whiteandwilliams.com](mailto:russella@whiteandwilliams.com); 215.864.6835) or another member of our Healthcare or Labor and Employment Groups.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. [Read all of the updates here.](#)