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CDC Ends 5-Day Isolation Guideline for COVID-19, Impacting New York State COVID-19 Paid Sick Leave Requirements

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On March 1, 2024, the Centers for Disease Control and Prevention ("CDC") repealed its previous guidance advising a 5-day isolation period for individuals testing positive for COVID-19 and issued consolidated guidance on "Preventing Spread of Respiratory Viruses When You're Sick." The new guidance provides unified recommendations for isolation and other precautions for individuals with respiratory viruses including COVID-19, RSV and flu.

Overview of New CDC Respiratory Virus Guidance

The new CDC guidance applies to individuals experiencing "respiratory virus symptoms that aren't better explained by another cause," including fever, chills, fatigue, cough, runny nose, and headache, among others. In such cases, the guidance provides that individuals can resume normal activities when, for at least 24 hours, both of the following are true:

- the individual's symptoms are getting better overall, and
- the individual has not had a fever (or had a fever but has been fever-free for at least 24 hours) and is not using fever-reducing medication.

Upon resuming normal activities, the guidance advises taking added precautions over the next 5 days, including "taking additional steps for cleaner air, hygiene, masks, physical distancing, and/or testing when [the individual] will be around other people indoors."

Individuals who test positive for a respiratory virus but never had symptoms are not subject to any isolation recommendation under the new guidance, but are advised to take precautions as noted above for the 5 days following the positive test.

The CDC notes that separate, specific guidance for healthcare settings regarding COVID-19, flu and general infection prevention and control remain in effect.

Impact of New CDC Guidance on New York State COVID-19 Sick Leave

New York State continues to maintain a COVID-19 sick leave law, which requires employers to provide at least 5 or 14 calendar days (depending on employer size) of (in most cases paid) sick leave for isolation or quarantine related to COVID-19, separate and apart from any other sick time or other paid time off the employer may already provide.

While the New York State Department of Health previously issued orders of isolation and quarantine at the height of the COVID-19 pandemic, the State now follows the CDC's guidance on isolation and precautions for individuals with COVID-19. Under the CDC's previous isolation guidelines, New York employees testing positive for COVID-19 were therefore automatically entitled to sick time under the State law for the universally recommended 5-day isolation period. Employees whose symptoms continued beyond the initial 5-day period may have been eligible for additional COVID-19 sick leave, depending on their employer's size.

Now, under the new CDC guidance, the amount of New York COVID-19 sick time an employee testing positive for COVID-19 may be eligible for will be case-dependent upon: (1) whether the employee is experiencing any symptoms (as an employee experiencing no symptoms is now under no advisement to isolate); and (2) how long the employee's symptoms (including, any fever) last.

It is noted that employees may use New York COVID-19 sick leave for up to three instances of testing positive, and need only provide a self-affirmation of the need to isolate for the first use of the leave. A second or third use of the leave must be based on a positive COVID-19 test and the employee must submit documentation from a licensed medical provider or testing facility attesting that the employee has tested positive for COVID-19. However, existing guidance on the COVID-19 paid sick leave law does not presently require any medical documentation of the presence and/or duration of symptoms an employee may be experiencing.

It is also noted that the proposed New York State Executive Budget for fiscal year 2025 includes a proposal that would sunset the requirement for employers to provide COVID-19 sick leave as of July 31, 2024.

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