The questions below were asked during the COVID-19 Managing Risk: What Employers Need To Know As Employees Return to Work live webinar. Please see responses to these questions below. If your question was not answered or you have an additional question, please email COVID19@holmesmurphy.com.

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1. **Can we stop referring to cloth masks as PPE? They are not personal protective equipment.**

   Appreciate the insight into this and question. You are correct that these face coverings are not tested or rated PPE. In fact, we like to use the term face coverings, it would be worthwhile to point out it is unclear of how much, if any protection it provides and therefore should be used with caution and only on a voluntary basis. The theory is that it would reduce the projectile distance and number of droplets in the air should a user talk, sneeze or cough. The amount and effectiveness is unverified. This would be a good opportunity to educate the workforce if that has not been done already. Feel free to reach out to your LC consultant, Jeff for additional insight or questions.

2. **With asymptomatic positives being an issue, do you suggest surveillance testing the employer employee base?**

   It would be the company’s choice to determine the risk level they are willing to accept and monitor it in a way that they are comfortable with. Surveillance testing at the company level at this time is likely not going to reduce the likelihood of spreading the virus from asymptomatic individuals. The reasoning is because testing results can take up to 72 hours to receive an accurate confirmation. By this time, employees would have been exposed to an asymptomatic individual. Therefore, we would recommend focusing efforts on the CDC guidelines for physical distancing and prevention.
3. **How do you recommend employers handle employees returning to cubicles? How to space when you have a structural constraint?**

In spaces where you are constrained by space, a second alternative is placement of barriers. Temporary wall partitions are one example.

4. **If someone finds out that they are exposed and later finds out they have been tested positive, should we trace back 2 days or 14 days?**

It is important to distinguish between exposure (another person has been found to have illness in the work or social environment) verses direct contact, <6 feet for 10 or more minutes. If the person has direct contact there are three key dates - when did they have direct contact, when did develop symptoms (they were shedding virus for 2 - 3 days prior to symptoms) and if they do not develop symptoms and get tested, when did they get the positive test. The individual needs to be isolated immediately upon the close contact to protect others and to see if they become ill.

- At 2 days or so after the direct contact, if they contracted the illness their PCR test will become positive.
- At 5 days they will usually develop symptoms.
- If they do not have symptoms and chose to get tested it would be a good idea to test at least 2 - 3 days after exposure and if the test is negative they can be retested at least 24 hours after the first test and, in the absence of signs (fever) and symptoms (cough etc.) if the second test is negative they can RTW.
- If the test is + they must wait 10 days from symptoms/test and not have temp for 3 days off meds prior to returning to work. If they chose to get retested and it is negative, then they must get a second test at least 24 hours later and if it is also negative, they can return to work.

5. **How could an employee claim WC for a positive COVID diagnosis? Wouldn’t they have to prove they contracted COVID at work?**

For a WC claim to be substantiated, the illness must have arose out of and in conducting the duties at the workplace. For this statement to be satisfied, a hazard would have to exist in the workplace, meaning the illness was in the workplace or probable to have existed in the workplace. This will be more difficult to show except in industries like healthcare or where a confirmed positive in the workplace occurred. Secondly, an authority would make the determination of whether the illness was contracted from the workplace. Typically, a doctor may indicate they believed the illness arose out of the
workplace. Another example could be federal tracing efforts where it was found to have originated from the workplace.

6. For IL, where can we be looking for new state laws as they are issued?

For laws and orders, you will find these on Illinois.gov website. Here is there direct link to executive orders: [https://www2.illinois.gov/government/executive-orders](https://www2.illinois.gov/government/executive-orders)

Additional resources specific to your state COVID efforts and guidelines can be found at the department of health here: [http://dph.illinois.gov/](http://dph.illinois.gov/)

7. If someone has symptoms, should we conduct tracing and send contacts home? Or trace only after a positive COVID-19 test?

You will want to consider the mental well-being of employees. Contact trace efforts could inflict fear or unsubstantiated concern. Therefore, we would recommend a person with symptoms be sent home and document with whom that individual has been in contact with so you can conduct tracing if they fall ill or are a confirmed positive. Communicating to contacts that an individual was sent home and to be cautious and report any changes in their health to you would also be a good practice to consider. Keep in mind, health privacy guidelines and concerns in any communication.

8. Is there a clear definition on PPE for COVID-19 in the workplace - could it literally just be a bandana? Does it depend on the workplace environment?

You are absolutely correct on work environment. What you determine for PPE will be based on the environment conditions, and community spread of their work environment. I would argue a bandana is no less or more effective than many of the face masks used currently, however you should consider the implications of wearing any face covering. A workplace that can maintain the physical distancing, is not a high risk facility and utilizes good cleaning and sanitization practices would likely not need any respirator. Again, most states and the federal government has listed PPE use as a guideline and not a requirement. Therefore, do a risk assessment of your workplace and determine if PPE is needed and then the appropriate PPE to protect employees from the hazards, if it exists in the workplace or prevent spread.
9. An employee who is exposed to a COVID-19 person who gets tested after that person has tested positive and whose (the employee) test comes back negative - can the employee come back without continuing to self-quarantine as long as they do not get in close contact with the already positive person.

Testing is not 100% accurate, therefore we would recommend that the employee who tested negative still follow the CDC guidelines and self-quarantine. If they choose to not self-quarantine, you may be able to provide accommodations that maintain the physical distance or no interaction with other people. Also, keep in mind the cleaning of surfaces they interact with.

10. Need more clarification on workers’ comp. Does COVID qualify for WC in Texas?

The answer to that question is “maybe.” While workers compensation laws provide compensation for “occupational diseases” that arise out of and in the course of employment, many state statutes exclude “ordinary diseases of life” (e.g., the common cold or flu). There are occupational groups that arguably would have a higher probability for exposure such as healthcare workers. However, even in those cases, there may be uncertainty as to whether the disease is compensable. One argument that could make the illness a compensable claim is OSHA’s view on whether it is considered a workplace injury or illness. Texas is currently following the OSHA reporting guidelines for COVID: [https://www.tdi.texas.gov/news/2020/dwc03302020.html](https://www.tdi.texas.gov/news/2020/dwc03302020.html)

11. What responsibilities does a building owner have in protecting the tenants and their employees and visitors

There are two responsibilities to think about if you own and are operating out of the building. For visitors or tenants, you will want to ensure you have taken all reasonable steps to ensure the building is operating in a safe condition. This may include a regular cleaning and disinfecting schedule. The second step is to notify visitors, employees and tenants of any potential community spread in your area and the steps you have taken to minimize its potential impact on your facility. As a good practice, you should take roll call or log anyone entering the facility with date and time and whom they may be interacting with. Posting the CDC guidelines and recommendations on prevention and asking visitors or employees to follow those guidelines should also be a part of the orientation or notification process. The idea is to protect and/or reduce both your general liability and worker compensation claims with these actions. If you are a landlord and do not have operational oversight, then you may want to send notice to tenants that they should ensure they are upkeeping their maintenance program, adhering to the federal guidance and recommendations and informing you of any facility shutdowns or confirmed cases.
12. Are there any specific recommendations regarding elevator occupancy? What if that creates a lobby backup?

This is a tough situation and good question. The short answer is to expect that there will be a backup and plan for aisle ways in the lobby where people are spaced apart as you have already recognized. Some practices we have seen employers implement include: Using an elevator operator and up to 3 other people riding the elevator by being placed in each corner. This of course is not possible for all situations depending on the size of the elevator. Another option is partitioned dividers. Other employers have eased the burden by staggering shift times for employee arrival or allowing only a few visitors into the building at a time. I hope this provides some additional ideas and feel free to reach out with additional questions.

13. Do you have a list of professional disinfecting companies with products like BacShield which claims effectiveness for 1 year?

We do not have a complete list of companies at this time, however attached is a resource listing various companies that utilize commercial grade disinfectants.

14. How, as employers, are we able to supply PPE when many vendors are still limiting sales to only medical professionals? We have had multiple mask orders cancelled by various vendors.

At this time you may consider only doing operations where PPE is not necessary. Keep in mind, using PPE such as respirators would only need to be required if there is direct contact with a known virus in the workplace. Physical distancing is still one of the most effective prevention methods and as long as that can done, there should be no need for PPE.

15. Will you be providing a sample checklist for best practices around risk management / prevention plans?

We would encourage you to visit our resource page for template management plans and checklists. [https://www.holmesmurphy.com/covid-19-resource-center/](https://www.holmesmurphy.com/covid-19-resource-center/)

16. Do you recommend required fabric face masks for recreational facility staff?

We would defer to the guidance by the CDC in using fabric masks where community spread is located and when people cannot maintain the minimum 6’ physical distancing. However, I would caution against "requiring" face masks of employees in a facility such as the YMCA where restricted air flow and heat stress could become a workplace hazard and risk during workouts. The recommendation is to allow face masks to be worn voluntarily and require that physical distancing be maintained. One last note, an additional reason to avoid requiring face masks to be worn is the effectiveness of those masks. There is
no testing or data that shows their effectiveness in stopping spread and therefore the employer could carry additional liability for requiring and prescribing a mask that does not provide protection.

17. If PPE (masks) are required to RTW, is the employer required to provide?

Thank you for the question. If an employer requires the use of PPE, under the OSHA standard of 2008, they are required to pay for and/or provide the PPE to the employer. Here is an outreach document explaining in more detail: https://www.osha.gov/dte/outreach/intro_osha/7_employee_ppe.pdf

18. I am sorry, I am confused. Which is better? Require face masks or make it voluntary? What info should we give to employees for either scenario?

Great question and understand the confusion around this topic. Face masks should be voluntary to wear. You will want to ask employees to follow the CDC guidance on the topic. The company position should be to identify opportunities and provide provisions for the 6’ physical distancing first. The communication to employees should outline that you do not have any recognized or known virus in workplace, the steps you are taking to prevent its introduction to the workplace, and the response plan in the event a confirmed case is found. Developing an infectious disease and business continuity plan is essential. The plan should outline the practices or policies employees should take while in the workplace (i.e. one-way aisles, meeting rooms, distance, cleaning and sanitization practices).

19. Are there employee training seminars that HM can provide before our employees return to work?

At this time, we do not have any scheduled, however we will be sure to let you know if this is something we can assist with. In the meantime, feel free to visit our resource page: https://www.holmesmurphy.com/covid-19-resource-center/

20. Would it be acceptable to bring all of our employees back to the workplace and we are able to practice health security (PPE, social distancing, and aggressive hygiene)?

We would recommend developing a business continuity plan if you have not already done so and identify whether bringing all staff back would be considered low risk with the physical distancing in place. If so, you may not have any issue with bringing anyone back, if however you discover you have some high risk employees or conditions, you may want to do a hybrid arrangement or phase in employees on a minimum two week spread. Consider the use of PPE as a last resort when returning employees to the workplace. Feel free to reach out with additional questions.

21. What is the best and safe method we can communicate to staff for deliveries coming into the office as well as outgoing?

We would recommend a notice letter to vendors outlining the unique and specific policies or protocols you have initiated at the worksite. All incoming and outgoing deliveries should have a log of date and
time and locations or people visited. This will allow for tracing should a confirmed case be found. Feel free to reach out with additional questions.

22. **We are going to establish an A & B group for employees to come back to the workplace. Is every other day better or worse than every other week?**

A weekly schedule is in most cases going to be a better scenario. This is because you will be able to more easily trace should a confirmed case be found. Also, keep in mind COVID-19 has been found to be contagious on asymptomatic people or people that are carriers but show no signs or symptoms for a few days. Using one week, should limit the potential of an asymptomatic individual spreading the virus quickly to the whole population.

23. **If a state requires a mandatory face mask to be worn if 6 ft social distance cannot be practiced, doesn’t an employer have a requirement to provide and enforce wearing? Maybe I misheard the info, but it sounded like it was to be only recommended.**

You will have to default to any state or federal law. Be careful to ensure the state is “requiring” it in the workplace before adopting it as mandatory in your facility. Feel free to reach out with additional questions or clarification.

24. **From a Legal perspective, you ought to pick up on the issue of “messages on masks” whether they be political or single out a group or race for the pandemic.**

That is an excellent point to consider.

25. **It is important to know the difference between cleaning, disinfecting, and sanitizing.**


Absolutely, this is a topic that could be expanded upon.

26. **Will you be sending this presentation out to participants on this call or is there a link on your website where this presentation will be housed?**

Yes, please view the recording and presentation at this link: https://think.holmesmurphy.com/WBN-COVID-19EB-April30-Registration-Page.html

27. **Many essential industries have been working during this crisis and consistently providing and reinforcing what you mentioned. What other steps would you suggest we reinforce?**

For me that starts with how has what you have been doing worked? Have you had any cases? What happened? How can the possibility of more infections be reduced? If not, then it sounds like you have been doing well. Again, it is a case-by-case, company-by-company process of thinking the risks/opportunities through.
28. If you are able to provide proper social distancing within an office workspace, is it still recommended to where a mask at all times?

The recommendation is to look at the prevalence in your area, the health of your population at work, the ventilation and other variables within the workplace. I don’t think there is a single answer to this, it is a case-by-case answer.

29. How do we "suggest" that those with risk do not return to work?

If your business can allow for telework, then flexibility is recommended. If not, the employer should not suggest those with risk to stay at home. Discuss this with your employment attorney.

30. Healthcare Question - We are now returning to work for elective surgery and all employees have returned.... Employer tried to help employees by allowing them to do some work at home so they could be paid during limited patient census. Now employees returning. HR Employee states that although no health concern, requests work at home, even though at home only 50% of workload can be done. HR cannot continue to accommodate HR work at home due to pressure on current staffing. Thoughts?

If your business can allow for telework, then flexibility is recommended. If not, then discuss with your employment attorney; but it seems reasonable to ask employees without self-identified risk factors to work in the office.

31. Do you think companies should take temperatures when employees return to the workplace?

It has been recommended as one way of screening, but developing a temperature occurs on day 5.5 of the infection so a person could have infected others for two days or more prior to developing symptoms or a fever. That is why social distancing, hygiene, and PPE is so important.

32. How would we test for active COVID? Require staff to be tested by their physician? Will there be a test we administer at the office?

It is highly variable. Some doctors are, others are not. We have done everything from setting up testing at the company where there is a high incidence to having them call their doctors office and go to a local testing station. One company has had their EEs go to CVS and Walgreens in their area, which may work for some. It has been frustrating getting the answers back on the EEs in this case. A local strategy will need to be worked out for your area.

33. Should wearing of face masks in office be mandated?

It’s a great and tough question to answer as everyone’s situation is different. The first step is to maintain the distancing to avoid wearing a mask in the first place; however, there are situations and industries where that is not possible. In those instances, you would advise the use. I would reinforce to all employees
to follow the CDC guidelines. The only time you would mandate is when work is being conducted around people who are confirmed positive cases or there is awareness that the virus is in workplace. There are some things you can do to encourage people to wear face coverings. For example, educating them that the coverings can protect their co-workers if they had come to work asymptomatic or without symptoms. One last scenario could include community spread that is currently affecting the public in the demographic location your facility and workforce is in. If you are providing essential services and folks are acquiring the virus in the community at a known alarming rate, then this could be prudent. However, it's a different case if your providing non-essential service, because using engineer or administrative controls is the preferred and more effective method. Hope this helps clarify some thoughts around the question.

34. If I choose to have my staff physically go to the office, am I required, as the business owner, to provide their PPE?

The OSHA PPE standard requires employers to pay for PPE for employees when it is required by the employer or to mitigate a recognized hazard in the workplace. If you are not requiring the PPE and there is not virus in the workplace, then you would not be required to pay for any PPE they choose to wear voluntarily. See this fact sheet for more information: https://www.osha.gov/dte/outreach/intro_osha/7_employee_ppe.pdf

35. What is the best way to get the information needed to determine the Risk of employees?


36. Can Holmes Murphy provide a list of general questions to give to employees before they return to work


37. High risk employees that need to self-identify to continue with remote working. Do we need to have documentation to cover the accommodation if everyone else is returning? What can we ask for?

- Can we set a return-to-work date, when it is appropriate, and end the remote working option? Do we have to extend the remote work option? When should we? Most everyone can work from home.

- We have an employee that is pregnant and has chosen to stay at home from 4/1-5/1/20. Must we hold her position open for when she returns to work, assuming she will return when the shelter in place order is lifted.
- I know this is primarily about if someone was tested positive. Will you be reviewing what to do if someone calls in sick with a symptom or two; however, not enough to test or doctor doesn’t believe it is COVID? What about employees who freak out and then don’t want to come to work due to that person being sick now just in general? Have you identified this?

- What are the legal ramifications of not going to work until there is a comfort level/vaccine? Could an employee be terminated?

- What if employee does not feel comfortable coming back to the office?

Being flexible is the key. If employees can telework then it would be prudent to allow those that wish to work from home to continue. If they can’t telework and want to remain home look at FMLA, EFMLA and EPSL to determine if they qualify for one of those leave reasons. If not, then require documentation like you would for other leave request and deal with them in the same way you would have in the past. Be sure to discuss with your employment attorney.

38. We have 21 staff members. Confidentiality will be nearly impossible if someone gets COVID during contact tracking identification process. How concerned should I be?

The employer must not communicate the identity and should work with the CDC on how to take steps to trace contacts. If employees share the information that is up to them.

39. Isn’t there a danger of setting precedent for this disease and having it apply to more standard and typical illnesses like the “standard” flu and cold? Will these strategies be “required” or expected too?

There is, but COVID 19 has been declared a National Emergency. Hopefully, the others will not be.

40. How long after a suspected exposure would a person test positive? I have an employee who had to go to New York. We’re wondering how soon after leaving New York a diagnostic test would be appropriate.

This is a tough question. If they have an “average case” and got COVID-19 the test would start to be positive on day 2 and positive on day 3, and symptoms will develop on day 5. But the incubation period for COVID is up to 14 days so this is not always the case. The Health Department wants to keep everyone out 14 days in our area, which is really challenging so other variables like workplace safety, health of the individual, and ability to work from home will be other important things to consider. There is no easy answer to the question.
41. How can it be the employer’s responsibility to "cure" patient’s underlying conditions? Or prevent them for that matter?

This will vary by employer as to their level of investment in responsibility. There are conservative, moderate & aggressive approaches. Our Holmes Murphy clients utilize a Disease-Specific Battle Plan to determine their investment level and their willingness to respond. It will take both an Organizational Response and Individual Responsibility (i.e. the employee) to be successful at combating the enemy of disease - both avoiding and reducing it.

42. How does the ACA tracking requirements work for 2021 enrollment for Open Enrollment or the month-to-month tracking? Will ACA tracking be revised to make sure staff are eligible at open enrollment.

We are unaware of changes at this time. Under the ACA, an employee's compensated hours are tracked, so actual work hours, vacation pay, sick pay, etc. In addition, FMLA hours and hours of jury duty are tracked. Hours that the employee has under the emergency FMLA will also be tracked. Other than that, when an employee is furloughed, his/her hours will likely not be considered as part of ACA tracking. We are hoping for guidance that might provide relief in this area.

43. Can we ask employees if they are sick, or if they have COVID?

Yes, see the CDC website https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html

44. Does the COVID testing (i.e., temperature checks) have to be done in private?

Yes, that would be a good practice.

45. If you have open enrollment during this time, do you need to allow flexibility if someone doesn’t make changes during the designated period?

Yes. The DOL recently issued guidance that suggests flexibility for both employer timeframes and employee timeframes.

46. Is it okay for employers to take an employee’s temperature upon entering the workplace when we reopen?

Yes. The EEOC has given employers permission to take temperatures to protect the workplace.

47. Are you allowed to ask employees if they are high risk, immunocompromised, or have risk factors that would make them high risk, so you have a better understanding of their needs?

You should not ask questions about their health when asking them to return to work.