

Home Care Developments

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DOH Clarifies Isolation and Quarantine Rules for Healthcare Personnel

On January 4, the New York Department of Health issued a [GUIDANCE DOCUMENT \(Jan. 4\)](#) to clarify the return-to-work and quarantine/isolation guidelines it published on December 24 ([GUIDANCE DOCUMENT \(Dec. 24\)](#)). These guidelines apply to healthcare workers and, in many respects, defer to the CDC's standards.

First, the applicable rule for an agency to follow with respect to personnel who are COVID positive or that have been exposed to COVID will depend on whether the agency is in (1) a conventional "strategy," (2) contingency strategy, or (3) crisis strategy. These "strategy" labels are CDC's terms for the 3 operations stages, and each stage is defined by healthcare personnel availability (i.e., the less healthcare workers there are, the "higher" level of urgency and strategy).

In simplest terms, an agency is under a "conventional strategy" if it is following the usual, non-emergency, and ordinary standards for operations during the pandemic. In our experience, almost no agency is in this phase at the moment.

An agency is under a "contingency" strategy when it is experiencing staffing shortages due to the pandemic, but it is able to continue providing patient care. We anticipate that most providers are still in this phase.

Crisis strategies are implemented only after a contingency strategy is exhausted, and the healthcare provider has notified the DOH that it is in a "crisis" state because it cannot provide essential patient services despite instituting contingency strategies.

The quarantine, isolation, and return-to-work obligations are summarized in the DOH's January 4 guidance document. As most relevant to New York LHCSA and CHHA providers:

- For providers who are in the **conventional strategy phase**, infected staff that is fully vaccinated but not boosted must generally follow the CDC 10-day quarantine guidelines, or 7 days with a negative test. For staff that has been exposed but is not deemed infected, the same rule applies.
- For providers that are in the **contingency phase**, infected staff who are fully vaccinated but not boosted are required to follow the DOH's December 24 guidance issued by the DOH, which generally provides for a 5-day isolation period. If the employee was exposed but is not deemed infected, no work restrictions are required with negative tests on days 1,2,3 and 5-7 (per CDC).
- For providers that have activated their **crisis strategy**, fully vaccinated and unboosted staff that has been exposed to COVID is not subject to any work restrictions. For fully vaccinated staff that are infected, the provider must contact the DOH and follow CDC Crisis Strategies, which currently contain no work restrictions for infected staff (if fully vaccinated).

Other rules apply for non-vaccinated staff and boosted staff. Please be sure to refer to

the January 4 "matrix" chart for those rules.

If you have any questions about these requirements for your staff, please let us know.



Reminder, NYS Paid Leave for COVID Law has not Expired

Our office has learned of several instances where providers were erroneously told that the New York State COVID-19 paid leave has expired and, as a consequence, their employees have not been paid the unique COVID sick pay.

To be clear, the **federal** FFCRA regulations, which had required businesses with less than 500 employees to provide paid COVID sick leave, expired at the end of September 2021. The FFCRA allowed businesses that provided paid COVID sick leave to receive a payroll tax credit, with certain limits, for provision of such time off. However, the New York State paid COVID leave - which has been in effect since March 2020 - has not expired.

Thus, New York employees who have an order to isolate or quarantine are eligible for pay for their leave. Large New York employers (defined to include companies with more than 100 employees) must provide such paid leave without accessing the employee's regular PTO or sick time accruals. And, now, due to the FFCRA's expiration, there is no payroll tax credit to offset the employer's payment and provision of such paid COVID sick leave to its employees.

Separately, as a reminder, employees who need to take time off to care for a minor dependent child with COVID or that is in quarantine, or for another qualifying family member, may be eligible for NY Paid Family Leave benefits.

DOH to Mandate Booster Shots

For any provider that has recently completed the HERDS Survey, it might be of no surprise to learn that the DOH will be proposing to impose booster shot requirements on covered healthcare personnel.

The Public Health and Health Planning Council ("PHHPC") is scheduled to meet on January 11, when the DOH will propose amending its healthcare worker vaccine

mandate REGULATION to require covered healthcare personnel to receive the booster shot.

The regulation, if adopted, would amend the current Department of Health vaccine mandate, found in Section 2.61, to require covered staff to be “fully vaccinated...and to have received any booster or supplemental dose as recommended by the CDC.”

Exemptions from the mandate would be allowed for medical reasons.

The proposed regulation contains no indication that it would extend to CDPAP.

Please let us know if you have any questions about the State's or any federal vaccine mandate.

Today! US Supreme Court to Hear Legal Challenges to Federal Vaccine Mandates

The highest court in the nation is scheduled to hear oral arguments today at 10 am as to whether the OSHA and CMS regulations are lawful. The oral arguments can be heard live at https://www.supremecourt.gov/oral_arguments/live.aspx Although no decision is issued from the bench (i.e., no decision today!), a written decision is expected shortly after the oral arguments and the arguments themselves could provide a strong showing of how the high court is likely to rule on this important issue for healthcare providers and employers with 100 or more employees. Based on some strongly worded dissents in other cases, we are almost certain as to how some of the conservative Justices will vote, but nothing is final until the written decision comes out.



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