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New York State Reduces COVID-19 Isolation Time for Certain Critical Workers

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Aiming to alleviate staffing shortages in essential workplaces – including restaurants and bars – due to the rapid spread of the COVID-19 Omicron variant, the New York State Department of Health (DOH) has issued [guidance](#) addressing when certain essential workers may return to work after experiencing symptoms or testing positive for the COVID-19 virus.

As explained in more detail below, where certain employers are facing a critical staffing shortage, they may permit a fully vaccinated employee to return to work after only five days of self-isolation if certain conditions are met. The guidance provides an extensive list of all essential workers and industries that are covered under this new five-day isolation rule. Visit the DOH's website to view the [complete list](#).

Background

Generally, the DOH recommends that an individual who experiences COVID-19 symptoms or tests positive for the virus should self-isolate for a period of at least 10 days. However, the new guidance acknowledges that imposing a full 10-day isolation period for certain critical workers has the potential to substantially impact essential industries that have already been experiencing severe staffing shortages. Thus, this new guidance aims to alleviate staffing shortages in those industries by instituting a five-day isolation period (as opposed to 10 days) if the below conditions are met.

Criteria for Early Return to Work

Employers may allow a covered employee who experienced COVID-19 symptoms or tested positive for COVID-19 to return to work after five days of isolation if the individual:

- is a “critical workforce member,” which includes employees that work at restaurants and bars;
- has been fully vaccinated for at least two weeks;
- is asymptomatic, or, if they have mild symptoms, when they return to work they must
 - have experienced an improvement in those mild symptoms
 - have no more than a minimal cough, and
 - not have had a fever for the previous 72 hours without the aid of fever-reducing medication
- is able to consistently wear a disposable mask at work until they complete the 10-day period.

The guidance defines day zero of the isolation period as either the first date of symptoms (if symptomatic) or the date of collection of the first positive test (if asymptomatic). The guidance also

explicitly states that testing is not a requirement to return to work under this program. Furthermore, individuals who are moderately to severely immunocompromised are not eligible to return to work under this guidance and must continue to self-isolate for a period of at least 10 days.

Elements of Isolation

Individuals returning to work under this guidance must continue to stay at home, take precautions to avoid household transmission and observe other required elements of isolation while not at work until the end of the 10-day period.

Employers must instruct an employee making an early return to work that the employee should:

- practice social distancing from coworkers at all times, except when job duties do not permit such distancing;
- separate themselves from others if they must remove their face mask for certain reasons, such as to eat or drink; and
- continue to self-monitor for symptoms and seek re-evaluation if symptoms recur or worsen.

This guidance is certainly a relief for hospitality employers that are having trouble keeping their establishments properly staffed as the COVID-19 Omicron variant sweeps across the country. However, employers should ensure that they are communicating with employees who wish to return prior to the 10-day isolation period and ensure that the employee satisfies the above requirements before they return to work.

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