

To Our Clients and Friends

Memorandum

October 28, 2020

CDC Guidance Changes Definition of “Close Contact”—Leading to Practical Difficulties, New Uncertainty, and More Quarantined Employees

On October 21, 2020, the Centers for Disease Control and Prevention (the CDC) issued new guidance that expands the definition of “close contact” for purposes of determining whether a person has been exposed to COVID-19 (and thus should stay home from work in quarantine for 14 days). The new definition not only will result in many more employees potentially being sent home to quarantine, but creates significant practical difficulties and uncertainty as to how a business can proceed to try in good faith to trace persons who have been in “close contact” with infected persons at the workplace.

The prior definition. Previously, the guidance provided that “close contact” meant that a person was within 6 feet of an infected person for 15 minutes or more.

The new definition. The new guidance provides that “close contact” means that a person was within 6 feet of infected persons for a *cumulative total of 15 minutes or more over a 24-hour period*. (The 24-hour period is to be measured starting 2 days before the onset of illness—or, for an asymptomatic person, 2 days prior to the collection of the test specimen—and continuing “until the time the patient is isolated.”)

Reason for the change. The change in guidance reportedly was made based on CDC and Vermont health officials discovering that the virus was contracted by a 20-year old prison employee who, over the course of an 8-hour shift, had 22 brief interactions with 6 prisoners whose COVID-19 tests were pending and the next day came back positive for the virus. The interactions, each of which was only a minute or less each, added up to a total of 17 minutes. Reportedly, the employee had no other known exposures to infected persons outside the prison and had not traveled outside Vermont in the previous 14 days. Also, he wore a cloth mask, gown and eye protection during all the interactions; and the infected persons wore masks during most (but not all) of the interactions. The health officials concluded that the most likely source of his infection was the brief interactions he had with the infected individuals for the cumulative total of more than 15 minutes over a 24-hour period.

Key Points

- **Need to modify policies and practices.** As we have discussed in previous memoranda, the best course for a business to limit the potential for liability for damages claims for injury or death resulting from exposure to COVID-19 is to comply substantially with CDC and other relevant guidance. Accordingly, businesses should consider modifying their current policies and practices to incorporate this new guidance.

- **Practical difficulties with compliance.** Under the prior definition of close contact, if a person at the workplace tested positive for COVID-19, the employer would have to contact anyone with whom the infected person had contact within less than 6 feet for more than 15 minutes. The new definition appears to suggest that, if a person at the workplace tests positive for COVID-19, the employer would have to contact anyone with whom the infected person had contact within 6 feet *for any period of time*. Then, it would have to be determined for each of those persons whether, in addition to the infected person, they were in contact within 6 feet for *any* period of time with any other infected persons—so that it could be determined whether they had been in contact with infected persons for more than 15 minutes *cumulatively*. We note that the above-mentioned prison employee’s contacts with prisoners were traced through the prison’s video surveillance system. We would note further that there may be routine testing of all prisoners in a given prison or area of a prison. In most workplace settings, however, the tracing capability, especially for very brief interactions (such as sharing an elevator, passing a person in the hallway, and so on), will be much more limited. Indeed, it may not be possible to do more than interview the relevant persons about which persons they remember and can identify as having been in contact with them. As a practical matter, employers should consider what can be done to make a good faith effort to comply.
- **Impact on OSHA claims.** Potentially, this broader definition of “close contact” may trigger additional OSHA recording and/or reporting requirements, and may be used to bolster OSHA’s position that many more COVID-19 cases are “work-related” than has previously been thought to be the case.
- **Impact on other precautions.** The expanded definition, which indicates an expanded risk of infection (including based even on brief interactions), underscores the importance of vigilance in mask-wearing and social-distancing, as well as other precautionary measures, at the workplace.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents. If you have any questions about the contents of this memorandum, please call your regular Fried Frank contact or an attorney listed below:

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