

Reporting Obligations in the Workplace (For Both Employers and Employees)

for LexisNexis Resource Hub – COVID-19



The outbreak of Covid-19 has created many uncertainties for both employers and employees, with many left in the dark as to what their reporting obligations are if someone in the workplace has tested positive or have come into close contact with a Covid-19 patient.

While it is obvious that someone who has tested positive should report this to their employer immediately, what about those who have come into close contact with confirmed or suspected cases?

Under the [Occupational Safety and Health Act 1994](#) ('**OSHA 1994**'), an employee at work has the duty to:

1. take reasonable care for the safety and health of himself and of other persons who may be affected by his acts or omissions at work;
2. co-operate with his employer for the employer to discharge the requirements imposed under the OSHA 1994; and
3. to comply with any instruction or measure by his employer under the OSHA 1994.

The phrase 'taking reasonable care for safety and health of other persons' is fairly broad. As such, it is reasonable to conclude that any person who has tested positive for Covid-19 would pose a risk to the safety and health of other persons whom he came into contact with while at work, and to those who share the same

workplace. Therefore, an employee who has tested positive for Covid-19 should report to their employer immediately, so that the employer can make the necessary arrangements to protect the other individuals who might have been exposed to such health risks.

In instances where an employee has come into close contact with someone who tested positive, and whether such contact would put others at the workplace at risk, the treatment of such cases is slightly less clear. However, given the novelty of the situation and how contagious the virus is, it is generally reasonable to expect the employee to make full disclosure of any suspected cases to the employer. Such disclosure enables the employer to prepare in advance in the event that the employee also tested positive.

Under the OSHA 1994, employers have an obligation to ensure the safety, health and welfare of his employees, as well as have a workplace safety and health policy. Employees should check such policies to see whether the employer has imposed any other more stringent reporting policies. For example, the employer may require the employee to report instances of close contact with a suspected individual (which is less risky as compared to close contact with someone tested positive).

Criminal penalties may be imposed on any person who fails to comply with his obligations

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under the OSHA 1994, be it an employee or employer.

Further, under the [Prevention and Control of Infectious Diseases Act 1988](#), both the employer and employee have a collective responsibility to notify the health authorities of the existence of the infectious disease, failing which criminal penalties may be imposed on these individuals.

Disclosure of personal data of employee who is suspected or diagnosed with Covid-19

An employer may be requested to disclose personal data of such employee to third parties or health authorities. This would include the individual's health conditions, where they have been, who they have been in contact with, etc.

The physical or mental health or condition of a person is considered 'sensitive personal data' under the [Personal Data Protection Act 2010](#) ('PDPA').

Under the PDPA, sensitive personal data should not be processed except where the data subject has given his explicit consent, or where the processing is necessary to protect the vital interests (i.e. life, death or security) of the data subject or another person.

For employers, having the employee's explicit consent will be the safest route for the employer

to collect, process or even to disclose such sensitive personal data to health officers or the relevant government authorities.

However, in instances where consent cannot be procured from a data subject, or where consent cannot be reasonably obtained by the data user, or where consent is unreasonably withheld, the employer can justify disclosing the personal data of an employee who is suspected or diagnosed with COVID-19 on the basis that it is necessary to protect the vital interest of other individuals (e.g. other employees and individuals in the workplace).

Conclusion

Employees should report promptly and practise full disclosure in reporting any potential exposure to Covid-19 so that the employer can take the necessary measures to ensure safety at the workplace.

Employers should be diligent in monitoring the Covid-19 situation at the workplace. Be aware of your obligations to keep the workplace safe and healthy, and co-operate with health authorities if someone has tested positive. Transparent communication with your employees on the situation of the workplace would certainly help in making them feel secure and to enable them to remain focused at work.

In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.

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