

DATA SECURITY & PRIVACY ADVISORY

Business Response to a Confirmed COVID-19 Case: Ensuring Privacy Protection



As government officials expect confirmed cases of COVID-19 to increase in the coming weeks, more and more businesses will have positive tests among their employees or those who regularly interact with their employees. This requires employers and businesses to strike the appropriate balance between alerting employees, customers, and other interested parties to potential exposure to the virus while also protecting the privacy of the person who is infected.

Below is a summary of the steps businesses should take upon learning of a confirmed case that may have exposed employees and/or stakeholders.

POSITIVE TEST OF EMPLOYEE:

- Notifying Other Employees: The [CDC guidelines](#) provide that if an employer learns that an employee has a confirmed case of COVID-19, the employer should inform employees of their possible exposure to COVID-19 in the workplace. However, in order to comply with the Americans with Disabilities Act (29 CFR 1630.14(b)(1)) and state data privacy acts (including Colorado's Data Privacy Act, § 6-1-713, C.R.S.), the notification should not identify the name or any other identifiable information about the infected employee, unless the infected employee voluntarily consents to his or her name being shared with potentially impacted employees. Additionally, to ensure ADA compliance, any health information received from an employee must be maintained in a file separate from his or her personnel file (29 CFR 1630.14(b)(1)).



Jessica Arett
Associate
Denver, CO
303.299.8170
[Email](#)



Emily Keimig
Member
Denver, CO
303.299.8240
[Email](#)



Melissa Reagan
Member
Denver, CO
303.299.8310
[Email](#)



Katie Varholak
Member
Denver, CO
303.299.8428
[Email](#)

- Notifying Government Health Agencies: The CDC “strongly encourages” employers who are aware of an affected employee to share the knowledge of the infection with state and local health officials. In some circumstances, the employer may even be required to report the infection pursuant to local health department regulations. Unless otherwise required, the employer should report the information to the health department without disclosing the employee’s identity, unless the employee voluntarily consents to such disclosure.
- Notifying Other Potentially Exposed Parties: If possible, employers should ask the infected employee about any contacts he or she may have had with customers, vendors, or other interested parties within the preceding 14 days. If the employee interacted with any third parties in connection with the business, the employer should, to the extent possible, notify those third parties that they may have been exposed while maintaining the confidentiality of the employee’s identity.

POSITIVE TEST OF ANOTHER STAKEHOLDER:

Similarly, if a business becomes aware that a third-party vendor, customer, or other person who regularly interacts with its business or customers was infected, the business is permitted to inform employees and other interested parties of the potential exposure. And although a business does not have the same obligations to a third party that it does to an employee, in order to ensure compliance with state data privacy laws and the Health Insurance Portability and Accountability Act (for those businesses that are covered entities), the name and any other individually identifiable information of the infected third party should remain confidential.