
Coates' Canons Blog: Disclosing Information about Employees with COVID-19

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Article: <https://canons.sog.unc.edu/disclosing-information-about-employees-with-covid-19/>

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On Wednesday, my colleague Diane Juffras published *What to Do When an Employee is Infected with or Reports Exposure to COVID-19*. She addressed a number of important issues, from the leave that must be provided to employees, to the actions that should be taken within the workplace to protect other employees. The post is comprehensive and I strongly recommend that you read it.

Diane also reminded readers that information about COVID-19 is confidential. In this post, I briefly review a state confidentiality law that applies to this information, and explain an administrative rule that addresses how confidential information may be shared with an employer when necessary to control the spread of communicable disease within a workplace. In brief, the rule allows the local health department to disclose information to the employer so that necessary communicable disease control actions may be taken. The rule also requires the employer to protect the confidentiality of individuals' information.

In North Carolina, the confidentiality of individually identifiable communicable disease information is protected by a state law, as Diane explained in her post:

Under N.C.G.S. 130A-143, information and records that identify a person who has or may have COVID-19 are strictly confidential and are **not** public records. ***This means that ordinarily, this information may not be disclosed to the media or general public.*** Disclosures of information are allowed, however, when they are necessary to protect the public health and are made in accordance with state communicable disease rules. For example, it will likely be necessary to disclose limited information *within a workplace* to assure that potentially affected persons are identified. State communicable disease rules provide for the local health department, not the employer, to make the determination about when such disclosures are permitted and exactly how to protect the privacy of the person with COVID-19 while making the necessary disclosures.

The state communicable disease rule this paragraph refers to is 10A N.C.A.C. 41A .0211. It authorizes a local health director to “reveal the name and diagnosis of a person with a reportable communicable disease ... which represents a significant threat to the public health” to an employer “when disclosure is necessary to prevent transmission in the facility or establishment for which [the employer is] responsible.” The rule also requires the health director to ensure that an employer it notifies under this provision is “instructed regarding the necessity for protecting confidentiality.” The health director may delegate both of these actions—disclosing information to an employer and instructing the employer in confidentiality—to an appropriate health department employee. See G.S. 130A-6 (delegation of public health authority).

The rule allows local health departments to communicate and coordinate with employers to assure that appropriate follow-up occurs when an employee has COVID-19. Disclosing the name and diagnosis of the employee with COVID-19 to the employer may well be necessary for a number of public health actions that are needed to control the spread of disease, including identifying individuals who are close contacts so that they can be instructed in disease control measures and referred for health care if needed, and identifying areas of the workplace that may need to be disinfected. All of this helps a local health department carry out its duties to protect the public health. See G.S. 130A-144(e) (requiring the local health director to ensure communicable disease control measures are given); 10A N.C.A.C. 41A .0201 (establishing communicable disease control measures for emerging diseases such as COVID-19).

But what about the employer's duties? Diane's post identified the first step for employers who learn that an employee has been diagnosed with COVID-19: notify the local health department that you have a case in a workplace, and request assistance on identifying potentially exposed employees and taking other necessary actions to protect public health. Here are additional steps an employer can take to protect employee health and safety while awaiting the health department's



response:

- The employer should immediately send the infected employee home, and determine whether other employees should be sent home as well, especially any that have had close contact with the infected employee (that is, those who worked within 6 feet of the infected employee for more than a brief period within the previous 14 days).
- When notifying the employees who are believed to be close contacts that they are being sent home, the employer may tell them that the health department is being contacted about a possible communicable disease in the workplace, and they will receive further information as promptly as possible.
- In addition to assuring employees who have been sent home that they will be kept informed, the employer should tell the employees that North Carolina law imposes strict confidentiality on information about communicable diseases, and encourage them to refrain from discussing or speculating about who may be infected or exposed.
- The employer should work with the health department to identify potentially exposed employees who may require follow-up by the health department.
- If the health department tells the employer that an employee must comply with communicable disease control measures, such as staying away from work for a period of time, the employer must require the employee to comply with the health department's instructions. See G.S. 130A-144(f); 10A N.C.A.C. 41A .0211(b). Be aware that a health department may also instruct an employer to take other required communicable disease control measures. For example, in some cases it may be necessary to temporarily close part or all of a facility for disinfection.
- The employer may wish to seek the health department's advice on additional matters, such as notifying other employees about the case(s) in the facility or establishment.

Finally, I want to note that the North Carolina Office of State Human Resources (OSHR) has issued a memo to local health departments and county departments of social services that provides more detailed guidance for those agencies. The memo's advice on notifying employees of workplace infections can be read in conjunction with this post to ensure the health department is appropriately involved and confidentiality is maintained. The memo also addresses other important issues, such as teleworking for affected employees and FEMA reimbursement for disinfecting worksites.

Links

- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_130A/GS_130A-143.pdf
- reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2041%20-%20epidemiology%20health/subchapter%20a/10a%20ncac%2041a%20.0211.pdf
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_130A/GS_130A-6.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_130A/GS_130A-144.html
- reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2041%20-%20epidemiology%20health/subchapter%20a/10a%20ncac%2041a%20.0201.pdf