



Episode 10: “Updates on the COVID-19 Quarantine and Isolation Guidelines”

Speaker: Ari Kwiatkowski and Rosemary Enright, Barclay Damon

00:00:06:09–00:00:29:17

[Ari Kwiatkowski]: Hi, everyone, this is a Barclay Damon live broadcast where we discuss all things L&E... labor and employment. I’m Ari. Let’s dig in.

00:00:29:17–00:00:46:14

[AK]: Hi, everyone, welcome to updates on COVID-19 quarantine and isolation guidelines. Today we are going to run through what you need to know about the updated guidelines issued by the CDC and adopted by New York state. For this episode it is my pleasure to announce that we have Rosemary Enright joining us again. If you are a regular listener of the podcast, you will remember her from our second episode where we told you everything we needed to know about New York state paid sick leave laws and the pandemic.

00:00:46:14 - 00:00:47:02

[AK]: Rosemary, hi.

00:00:47:02 - 00:00:49:17

[Rosemary Enright]: Hey, Ari, it’s good to be back.

00:00:49:18 - 00:01:28:00

[AK]: Yes. Good to see you. You know, I think our plan is maybe we’ll have Rosemary join every ten or so episodes, so look for her in the future. So Ro, since you were on the podcast before you know the drill and you gave us some interesting information about you and I ask every guest to provide us with some fun or interesting fact personally or professionally. Last time you were on, you told us about your travel adventures, which I’m sure gave me and all of our listeners wanderlust, since we’re not all, not traveling as much as we’d like. But, you know, here’s your second time on the podcast, so hit us with another interesting fact—I know you have many.

00:01:28:16 - 00:01:33:08

[RE]: All right. Well, you know, all right, I’m going to stay with the whole travel theme. I think that’s going to be my thing.

00:01:33:14 - 00:01:35:22

[AK]: I like it. We’ll live vicariously through you.

00:01:36:05 - 00:02:59:15

[RE]: OK, you got so, so so I guess what... I was thinking about it, and I think, well, share with everybody is I don’t know how many years ago it was, but we did the trek to Machu Picchu, and so we did that in time. So it was the days leading up to the winter solstice. So five days trekking through the Andes Mountains, we arrived at Machu Picchu at sunset the day before the winter solstice. And so you come through the Gate of the Sun, you know, you do the climb and then Machu Picchu is, you know, is all below you, which is amazing. And then there’s a tiny little like inn where you stay there. And so we stayed there and because I hadn’t hiked enough, Ari, we got up the next day at 3:00 in the morning and hiked to the top

of Line of Picchu, which is the mountain that you see, it's kind of is in the shadow, you know, or creates a shadow on Machu Picchu. And the point of that is you need to be there at sunrise on the day of the winter solstice, which is the most important day of the year there. And so you stand, I have a picture of me standing at the top of Line of Pichu, a picture with the sun, the rays of the sun just going past, and they hit that sundial at Machu Picchu.

00:02:59:22 - 00:03:08:06

[AK]: Love it. Love it Ro. That's what that's what we all actually need to hear about now, especially those of us who are in upstate New York.

00:03:09:02 - 00:03:10:02

[RE]: With all the snow.

00:03:10:08 - 00:03:55:09

[AK]: It's as cold as it's ever been. Yeah, exactly. And before we dive into our listeners, I did want to mention earlier, and I should mention that if you did not listen to the first episode that Rosemary came on, Rosemary is our practice group leader of the Labor and Employment Practice Group at Barclay Damon, and she is also located in our Buffalo office. So, Rosemary, let's dig in. We're going to talk about the updated isolation and quarantine guidelines, and before we go into those in detail, I just wanted to ask a question or a clarification because I know I've had a few employers ask us...I know we're a couple of years in, but there is a difference between isolation and quarantine, and I think it would be helpful if you could just clarify that quickly for our listeners.

00:03:55:17 - 00:04:09:11

[RE]: Basically, when they talk about isolation, obviously the individual is isolating themselves from others, but that is when someone has tested positive. Right. So you're isolating because you tested positive for COVID.

00:04:09:13 - 00:04:09:20

[AK]: Right.

00:04:10:00 - 00:04:25:05

[RE]: When they talk about quarantining again separated from people and that. But but quarantining is when someone has been exposed. So we get isolation orders when we test positive, we get quarantine orders when we have been exposed to COVID.

00:04:25:15 - 00:04:36:11

[RE]: Great. Thanks for that clarification. I think that I just wanted to make that at the outset because I think at least in my experience, and it can definitely be confusing. I think some of our clients and employers kind of conflate those two concepts.

00:04:36:11 - 00:04:59:22

[AK]: So wanted to clarify that. So Rosemary, you know, the CDC came out with updated guidance for quarantine and isolation periods back in December, and the New York State Department of Health essentially adopted those updated guidelines on January 14. So let's talk about isolation first. Just generally, what do these updated isolation guidelines say.

00:05:00:21 - 00:05:44:07

[RE]: So well, as you said, you know what? Generally, just, you know, at a high level what they've done is they have reduced or shortened the amount of time that people have to isolate or quarantine, which we'll talk about in a bit. So that's really, I think, the most notable is that thing is that it's been significantly reduced. So, you know, initially we started, as we all know, two years ago, right? Yes, forever. But the new normal for, you know, it was 14 days and then it went down to 10 days. Right. Well, so now what they've said is for isolation. And again, this is if you test positive, you've got to isolate for five days. So that's ...that, that's the significant change.

00:05:44:09 - 00:05:53:14

[AK]: And Rosemary, to clarify: when we say five days, it's my understanding day zero is the first day you have symptoms. Is that right?

00:05:54:03 - 00:06:03:07

[RE]: That's correct. OK, so so day zero for purposes of counting day zero is that that first time you experienced a symptom.

00:06:03:11 - 00:06:09:23

[AK]: Right? And if you're asymptomatic and you subsequently test positive, when is the first day? When do you start counting?

00:06:10:17 - 00:06:27:13

[RE]: So, so you day zero is the day that the positive specimen was collected, in other words, the day that you took the test?

[AK]: Right.

[RE]: So a lot of people are, as you know, get confused and that's, you know, oh, it's when they got the they got the positive test result. That's when I start.

00:06:27:13 - 00:06:36:13

[RE]: No, it's from one day zero is when the positive specimen was collected. So that means day one would be the next day.

00:06:36:16 - 00:06:49:02

[AK]: Yes. And I'm glad you clarified that Ro, because, you know, I think if you just read the guidance itself, you know, it's a little bit wonky and a little bit confusing when they say, you know, specimen collected. And if you keep reading, they clarify that that means you know what

00:06:49:02 - 00:06:54:21

[AK]: You said it just what you just said it means. But I think if you're just reading the guidance, it is a little bit confusing.

00:06:55:05 - 00:07:10:08

[RE]: Yeah. And I think the other point we should make, Ari is that when we're talking about five days, we're talking five calendar days, right? So people are sometimes getting wrapped around the axle, oh, well, it's five working days. And it's no, it's five calendar days.

00:07:10:09 - 00:07:11:16

[AK]: Including the weekends.

00:07:11:23 - 00:07:14:08

[RE]: Including the weekends. That's exactly right.

00:07:14:09 - 00:07:15:12

[AK]: Just to be clear, right?

00:07:15:17 - 00:07:16:02

[RE]: Yeah. Yeah.

00:07:16:06 - 00:07:28:12

[AK]: So basically, Ro, these updated guidance guidelines say that you can endure isolation period after five days if you meet certain qualifications. Can you tell us a little bit about what those qualifications are?

00:07:28:21 - 00:07:47:23

[RE]: Yeah. You know, it's pretty straightforward. It's if the, the symptoms are the word they use is "resolving." So basically, you're feeling better. And you know, and often what we look at also is, you know, the fever and they've been talking about that from the beginning.

[RE]: If you no longer have a fever and you don't have a fever without the assistance of fever-reducing medication?

[AK]: Yes.

[RE]: So, so it's the symptoms of have have resolved or are resolving. You don't have a fever anymore. Essentially, like I said, if you're feeling... if they're feeling better, so ...but go ahead

00:08:09:16 - 00:08:18:05

[AK]: I was just going to ask Ro, in how how long do you have to be fever-free in order to qualify for being released from isolation under these guidelines?

00:08:18:18 - 00:08:32:12

[RE]: So, yeah, so Ari, it's 24 hours. So as long as they've been fever-free without the use of, you know, aspirin or Advil or something like that for 24 hours, if they're ...they're free to come back or free to come out of isolation.

00:08:32:23 - 00:08:54:13

[AK]: So, Rosemary, you know, an employee has met those qualifications. You know, they... their, their symptoms are resolving. They don't... they haven't had a fever for that required time period. And you know, they're ...they're more than five days out. Once the individual is out of isolation, are there any other requirements or things that the guidance recommend for that person?

00:08:54:22 - 00:09:13:06

[RE]: Yeah, they recommend that the individual should be wearing a tight fitting mask and for five days afterward. And in fact, they also recommend, if possible, you know, you can go and have another test, but that's not required. So testing out isn't required, so...

00:09:13:15 - 00:09:27:01

[AK]: And that was going to be my next question, Rosemary, which I know I think we've gotten a ton of questions on from our clients that are employers, which is to clarify you don't need to test out of this.

00:09:28:01 - 00:09:58:16

[AK]: Rosemary, one thing I wanted to talk about with you is something that actually ties into what we talked about the first time you were on the podcast. You know, when we discuss New York paid sick leave laws and basically we discussed how, you know, in order to qualify, an individual has to be under an order of isolation or quarantine. And you know, as I mentioned earlier in the episode, we're in Buffalo. So you know, I saw Erie County most recent excuse me, Erie County recently updated their... their COVID-19 guidelines in web page on this.

00:09:58:16 - 00:10:13:19

[AK]: But one of the things that we've seen in this updated guidance is what we call an affirmation of isolation. And I think, you know, we've got some questions about that. Can you explain for our listeners what is an affirmation of isolation and how does it work with the New York state paid sick leave laws?

00:10:14:16 - 00:11:30:00

[RE]: Yeah, it's a great question, and it's coming up a lot because I think Erie County did it because the Department of Health just can't keep up.

[AK]: Exactly.

[RE]: They can't issue orders. And the way that the COVID sick pay law was written is you must be subject to an order that's issued by an agency, the Department of Health or something like that. And as we said, they just can't keep up. So what they've now done, as Ari said, is on the website, when you got the DOL website, it's the... it's paid leave for COVID. You scroll all the way down to the bottom you're going to find a link for when you select that and you go in and it's a, as she said, an affirmation so an individual would then put in their name. There's a there's a whole bunch of information we won't go through all that during this podcast because you can see it for yourself, but they basically are going to a test or affirm or certify to the fact that they experienced symptoms on this day. You know, they may have done something with a home test. And, and so they put in the dates and then based on that, they would submit that to the employer and the employer can then use that as the quarantine order—it replaces it, essentially.

00:11:30:07 - 00:11:44:11

[AK]: Exactly. Yeah. I definitely wanted to make that point because I think we've gotten a lot of questions about that, Rosemary, and I think that's pretty important. And, you know, I know other counties throughout the state have have put that on their COVID-19 websites. And you know, as you mentioned, it's on the DOL website. It's on the New York state COVID-19 response page. So I just wanted to mention that because that can be used by an employee and should be accepted by an employer as if it's an individual order of isolation.

00:11:59:05 - 00:12:15:00

[RE]: Exactly. That's right. And there is, you know, and the thing you know, which which a lot of our listeners, you know, may get kind of wrapped around the axle is well, it says it's got to be issued. And so I can't give them, you know, I can't pay them the COVID sick pay.

00:12:15:00 - 00:12:22:20

[RE]: And that's not it at all.

[AK]: Right.

[RE]: That's not it at all. You should be absolutely accepting it if your employees come in and present that to you.

00:12:23:03 - 00:12:35:11

[AK]: Yes, good point. So I think I think we went through the updated guidelines as it relates to isolation rules. So I wanted to just transition so we could talk for a few minutes about the updated guidance as it relates to quarantine.

00:12:35:11 - 00:13:00:17

[AK]: So, you know, in the beginning of the episode, we talked about how they were different, and I think most of our listeners have had the experience, as you mentioned over the last almost two years with these types of issues. But basically, these updated guidelines apply if an employee has come into close contact with someone who has COVID-19. And if you could just kind of high level tell us, you know what? The guidance says, it applies to employees in that scenario.

00:13:01:06 - 00:13:18:07

[RE]: Sure. And actually, you know, what Ari, we should probably make a... be maybe a little clearer. You know what? We were just talking about the isolation, you know, we didn't differentiate between someone who's vaccinated and somebody who's unvaccinated.

00:13:18:07 - 00:13:38:15

[AK]: Yes.

[RE]: So remember listeners. So the isolation is, you know, I've tested positive. I got symptoms. It's not exposure. And so regardless of vaccination status, you're isolating for five days.

[AK]: Yes. So vaccination status doesn't make a difference now, but it does when we're talking about quarantine.

00:13:38:16 - 00:13:39:06

[AK]: Exactly.

00:13:39:17 - 00:13:56:18

[RE]: So with the quarantine. So if we're talking about an unvaccinated person and of course, we all know every sitting there, "OK, so what's a vaccinated person at this point is like you changing it, right, Ari, every time we turn around!

[AK]: Yes. You know, so.

00:13:57:02 - 00:15:32:16

[RE]: So at this point, the way the guidance is, is, is drafted is, so if a person is unvaccinated or they are vaccinated, but it has been more than six months, all right, since they received the vaccination. So that's Moderna or or or Pfizer, and they have not gotten a booster and they were eligible for the booster. All right. So that is in a whole big mouthful there for you. And, so J&J, if it's more than two months since you received that, you're basically in this first bucket of unvaccinated, they consider you unvaccinated. Yeah. And so if you are in that bucket, and you were exposed. Right, so the guidance is or the requirement is that you quarantine now for five days and again, it's the five calendar days. So.. and if you are vaccinated and you are asymptomatic, all right? So again, let's make sure very clear, Ari, this is I was exposed, so I was exposed. But if I'm a vaccinated person, so again, I guess that whole criteria of, you know, I've had the vaccination within the past six months or I'm boosted, excuse me, so you don't have to and you're asymptomatic. You don't have to do anything. You don't have to do anything. Now the guidance recommends that you may want to in five days go and have a test, but you don't have to. So long as you remain asymptomatic, the employees can be in the workplace.

00:15:33:04 - 00:15:42:04

[AK]: Now under that scenario Ro, should the employee wear a mask or does the guidance say if the employee should wear a mask under that... those circumstances?

00:15:42:08 - 00:15:55:08

[RE]: So, Ari, that's a great question. And you know, the two of us can sit here and laugh because the answer right now is doesn't matter if I mean in terms of wearing a mask. Right? Because the mask mandate is still in place.

00:15:55:12 - 00:15:55:19

[AK]: Yes.

00:15:57:03 - 00:16:03:18

[RE]: So the person is vaccinated, they were exposed. They're asymptomatic. They've got to wear a mask because everybody's wearing masks in the workplace.

00:16:04:03 - 00:16:25:20

[AK]: Right. So just to recap Ro, because as you say, the guidance is a bit of a mouthful. If you are vaccinated and you're boosted and you've had contact with someone with COVID-19 or you've been exposed, but you have no symptoms, you do not have to test, you do not have to quarantine. You are pretty much good to go about your business.

00:16:26:02 - 00:16:29:14

[RE]: Exactly. Yeah, that's what the current guidance is. That's right.

00:16:29:17 - 00:16:43:18

[AK]: So so what about in the in case of an unvaccinated employee or, you know, a vaccinated employee, but who has not received a booster who's eligible for a booster? What, what... What does an employee under those circumstances need to do?

00:16:43:18 - 00:17:06:12

[RE]: And under those circumstances, they've got to quarantine for five days and the same thing the calendar days. And, you know, just as we discussed before in terms of the counting, you know, when does that when do we start counting day zero, day one for purposes of the quarantine, the date of the last exposure that is day zero

00:17:06:16 - 00:17:34:16

[RE]: So that means if I was, for example, this past Sunday cheering the Bills on, you know, and I was exposed because I was in a Buffalo backers restaurant. So that would be day zero, day one would be Monday. So for purposes of the quarantine and in this particular instance...So that that factual scenario being the only way that the game a couple of weeks ago could have been worse.

00:17:36:13 - 00:17:38:13

[RE]: Right, that's exactly right.

00:17:40:06 - 00:17:55:08

[AK]: For our listeners, please excuse us. Obviously, I mentioned earlier in the episode were both in our Buffalo office Ro's, we're both Bills fans. Rosemary is like a die-hard Bills fan who is at every game. So yeah, well, the Monday after that day was just the Monday is sort of Monday, as.

00:17:55:21 - 00:17:56:05

[RE]: Long as.

00:17:56:06 - 00:17:57:08

[AK]: Everyone is, if they.

00:17:58:03 - 00:17:59:00

[RE]: Heartbreaking.

00:17:59:10 - 00:18:17:02

[AK]: But we digress. We will get back to talking about the quarantine guidelines. So, yeah, so Rosemary, those employees, they have to quarantine for five days. Day zero is the date of, you know, the last date of exposure to the individual who tested positive.

00:18:17:08 - 00:18:22:15

Yeah. What does the guidance say about whether that employee should test or whether they should test?

00:18:23:16 - 00:18:27:13

[RE]: So, so they recommend that that employee test after five days.

00:18:28:18 - 00:18:31:21

[AK]: And if the test is negative, then the quarantine period can end.

00:18:32:03 - 00:18:33:10

[RE]: Right? Right. Correct.

00:18:33:17 - 00:18:40:21

[AK]: Correct. But again, the guidance says the employee should wear a mask for an additional five days just to be consistent with the ten day period.

00:18:40:21 - 00:18:43:00

[RE]: Essentially, that's correct. That is correct.

00:18:43:00 - 00:19:06:18

[AK]: And if the employee under that situation tests positive, then they should isolate for five days from the date of the positive test.

00:19:06:18 - 00:19:11:20

[RE]: Correct.

[AK]: OK, that makes sense. Now, under these scenarios, basically, I think it's important to note that if you test positive, you kind of you transition from the quarantine period to the isolation period and then you follow the isolation rules because I think the way that the guidance is written, it's a little bit complicated.

00:19:12:08 - 00:19:25:19

[RE]: Yeah, it absolutely is. It's... it's... it's... it's hard to keep track of it all. Well, and then of course, you get into the whole. All right. So where do we start counting from in terms of like the COVID sick pay, which we talked about last time, Ari?

00:19:26:01 - 00:20:08:04

[RE]: Yeah. And you know and. So if somebody was, you know, isolating, which is what would come first, is no, quarantining and then they're going it, yeah, quarantining into isolating, that's right. So I mean, you would have started counting your days there and they would have paid their five, you know, been paid there five days for the quarantine. And then if they're moving into, oh, now I'm positive, so I have to isolate at that point, depending on the size of the employer. Right. Because if it's more than 100 employees, they may not be eligible for paid family leave, but others would then be applying for paid family leave, alright, because they are still out. And employers, as we know, only have to pay the number of days for the duration of the quarantine.

00:20:08:09 - 00:20:25:19

[AK]: Exactly, yes. And for our listeners, if you're new to the podcast and you want to hear more about that, definitely check out episode two, where Rosemary and I went through basically all the details you need to know about the paid sick leave laws. So Ro we talked about, you know, the affirmation of isolation.

00:20:25:19 - 00:20:34:15

[AK]: Is there also an affirmation of quarantine that is that was issued by the state and adopted by local health departments as it relates to this guidance?

00:20:34:15 - 00:20:50:12

[RE]: Yup, absolutely. And you go to the exact same place, you can go to the DOL website, scroll down and it's right down. It's right where the affirmation of isolation is. Same, same concept and employee fills it out and provides it to their employer. And you should accept that as if it had the full force and effect of quarantine order issued by the Department of Health.

00:20:58:23 - 00:21:09:18

[AK]: Great. Ro, I think, you know, I think we went through everything that our clients and employers should know about this updated guidance. Is there anything you think we're missing or anything you'd like to add before we wrap up?

00:21:10:16 - 00:21:16:05

[RE]: No, I don't think so, Ari. I think now I think that's everything.

00:21:16:07 - 00:21:43:14

[AK]: Great. Well Ro, thanks again so much for joining. I'm glad you came on this episode. I think it really fits perfectly with what we talked about last time. You know, to our listeners, if you have more questions about, you know, the New York paid sick leave, as I mentioned, please listen to our second episode. It'll tell you everything you need to know. Please stay tuned. Next week, we'll tell you what you need to know about the New York State HERO Act. Rosemary, thanks so much for joining us. Always a pleasure. If there's nothing else, we'll see you guys next week.

00:21:43:16 - 00:21:44:20

[RE]: Thanks, bye.

00:21:44:20 - 00:22:06:10

[AK]: Thank you. The Labor & Employment Podcast is available on barclaydamon.com, YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Podcasts. Like, follow, share, and continue to listen. Thanks.

This material is for informational purposes only and does not constitute legal advice or a legal opinion, and no attorney client relationship has been established or implied.

00:22:06:21 - 00:22:07:15

Thanks for listening.

