**Answers at 8, October 20, 2021**

This week’s Answers at 8 provided legal updates and highlighted two organizations that can support employers as they navigate testing, vaccination and contact tracing:

[**Smartlink** **Health**](https://www.smartlinkhealth.com/)**:** Ginny Mahaney, CCO, joined us to describe SiteClear, a COVID-19 Response Management solution that they provide employers to automatically allow for upload, tracking and alerts related to COVID-19 vaccination proof, testing results and contact tracing. [ginny.mahaney@smartlinkhealth.com](mailto:ginny.mahaney@smartlinkhealth.com)

[**Intellect Resources**](http://www.intellectresources.com/)**:** Tiffany Crenshaw, CEO, offers an employer support team which includes a clinical director. They can assist with establishing policies, support tracking of testing and vaccination, provide contact tracing, and work through exceptions and following up with employees. They are one of 20 companies that are endorse by the state of NC to provide contact tracing services. [tcrenshaw@intellectresources.com](mailto:tcrenshaw@intellectresources.com)

**Legal Updates:**

* Certain state laws (Montana and Texas, as examples) are in conflict with the federal contractor vaccination mandate (requiring accommodation for “personal conscience”), and will make compliance with the OSHA ETS for employers with over 100 employees difficult. Challenges are likely to arise in the courts.
  + It is likely that federal agency rules will pre-empt state laws, as the federal government typically has the right to add clauses such as the vaccine mandate to their contracts. Contractors and subcontractors in these states should seek legal counsel but should understand that failure to comply could impact their ongoing contract.
  + These state laws may be seen as incompatible with OSHA’s purpose in protecting workplaces; however, until such a time as the courts decide, employers should be cautious and seek legal counsel if putting in place vaccination policies in these states. They may choose to test weekly instead.
* The OSHA ETS was sent to the White House on October 12th (but no details are available). Fisher Philips provided an excellent [summary](https://www.fisherphillips.com/news-insights/oshas-mandate-emergency-rule-white-house-final-review.html) of next steps, although we seem to be behind schedule at this point since the public has not yet seen the ETS. We will continue to update members when we know more. States with state OSHA programs (NC, SC, VA, TN) may have a longer period of time before employers must comply, as they can adopt or suggest an alternative to the ETS.
* Many employers are considering purchasing over the counter tests for the weekly testing programs and either administering or reviewing results themselves. We would advise against this course as in many cases this would cause your program to be seen as a “laboratory”. At that point, a CLIA certificate of waiver would be required as well as adherence to other requirements. This would not be feasible for employers unless they have an existing medical clinic onsite (likely tied to a larger medical group). Many laboratories will come to test onsite or will interpret self-administered tests. These programs, or offsite testing (and paying the associated cost of travel, etc. for your employees) are better alternatives. Some sites that have been suggested by members are: [CVS](https://www.cvshealth.com/covid-19/return-ready/testing), [Labcorp](https://www.labcorp.com/coronavirus-disease-covid-19/organizations#antigentest), Walgreens, BioAgilityx , Quest Diagnostics, Mako, Radeas Labs Inc., Star Med and <https://covid19.ncdhhs.gov/about-covid-19/testing/find-my-testing-place/test-site-finder> - The DHHS testing [locator](https://covid19.ncdhhs.gov/about-covid-19/testing/find-my-testing-place/test-site-finder) would be a good place to start as well.

**Testing, Vaccination and Tracing (Lessons Learned from Smartlink Health and Intellect Resources)**

Employers who begin vaccination or testing programs need to think through their options. It can be helpful to work with an outside source or Catapult to put the program together. Intellect Resources and Smartlink Health can provide policy support and assist with human and technology solutions to take much of the administrative effort and compliance requirements off your shoulders. While Catapult provides policy tools through the [COVID toolkit](https://letscatapult.org/toolkits/covid-and-pandemic-toolkit/), a full program can be quite complex. Some of the questions that Tiffany and Ginny suggested asking as you begin considering your program are:

* If you start testing, you are likely to discover additional positive cases (asymptomatic). What has your experience been with contact tracing and are you up to date on what the CDC recommends?
* How will you handle unique situations? CDC guidance is general and somewhat flexible at this time and often not directed specifically at employers.
* Are you comfortable assessing religious and ADA accommodations for both vaccination and testing?
* How will you handle complex cases such as those with ongoing contact with a positive case at home (vaccinated AND non-vaccinated employees)?
* Is it appropriate to adopt shorter quarantine measures and does your local health authority permit it?
* How will you handle an exceptional employee who declines vaccination or testing without ADA/religious back-up?
* How do you ensure the confidentiality of medical information such as vaccination status?
* Does your organization have the administrative capability to track the information appropriately to ensure employees are testing as scheduled and out of work when appropriate?

Tiffany stated that while employees could try to provide false information, they have not done so frequently to her group. She believes that this is, in part, due to the presence of medical staff on the team. Once employees are aware that their paperwork is being thoroughly reviewed, they seem to comply quite well with the requirements.

Intellect Resources and Smartlink Health have had the unique opportunity to identify where issues are occurring across a wide range of clients. They can trace back most outbreaks to breakrooms, bathrooms, smoking areas, small conference rooms and small classrooms. In general, when employees are somewhere private, they feel more comfortable removing their mask to take a few deep breaths (and they forget that everyone else who has passed through that area might have done the same thing). When employees are together in groups, it suddenly feels socially OK to “be friendly” and remove the mask, or lower it to feel better understood by the group. Outside of the worksite - carpools, direct contact at home and special events like Superbowl parties are the primary sources of spread.

Many members wanted some reminders about what they must do related to quarantine and isolation, so here is a quick review:

**Positive Case (vaccinated and unvaccinated):** 10 days from earlier of positive test or symptoms beginning. (Final 24 hours must be fever free with no use of fever reducing medicine, and symptoms improving.)

**Close Contact Case – no ongoing contact (unvaccinated):** You have multiple options, the least risky is 14 days, then 10, then 7. Choose based on your confidence in your other safety protocol, as well as your industry and job risk factors.

* 14 days (with no symptoms reported)
* 10 days (with no symptoms reported) if your local DHHS and any regulations for your industry permit.
* 7 days (with a negative test administered in the final 48 hours of quarantine) and no symptoms if your local DHHS and any regulations for your industry permit.

**Close Contact Case – ongoing contact (unvaccinated):** Same options as above but they start AFTER the positive contact is negative (generally 10 days). Therefore, a minimum 17-day quarantine.

**Close Contact Case – no ongoing contact (vaccinated):** Same options as for an unvaccinated with close contact (not ongoing), with one additional option. That option is to NOT quarantine. Instead, require a mask for 14 days as long as no positive test/symptoms, OR until the results of a COVID-19 test are negative (must be administered between day 3 and 5 from first contact) AND no symptoms. Again, choose based on your confidence in your other safety protocol, as well as your industry and job risk factors. The

**Close Contact Case – ongoing contact (vaccinated):** This is one of the most difficult situations and not addressed by any guidance. Still, it is best to mask the entire “positive” period (generally 10 days), then use one of the options above.

Written by a Catapult Advisor