



## NATIONAL SAFETY COUNCIL

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### Position/Policy Statement

#### Contact Tracing

As of June 12, 2020, the following information is the most up to date for Severe Acute Respiratory Syndrome coronavirus 2 (SARS-CoV-2). Given this, the National Safety Council (NSC) has developed policy positions reflecting the most recent data and information. These may change over time as more information is learned.

#### **POSITION/POLICY:**

The National Safety Council (NSC) urges all employers to, in conjunction with public health officials, participate in contact tracing in the workplace to help stop the spread of SARS-CoV-2. Employers should:

- Encourage employees to participate in a technology or other system to determine employee contacts during their infection period
- Seek employee buy-in for contact tracing whether tracing is conducted by an app or through other means
- Allow employees who were exposed to the sick individual (identified through contact tracing) to remove themselves from the workplace and self-quarantine according to Centers for Disease Control and Prevention (CDC) recommendations

Public health agencies should develop contact tracing communication tools for use by employers and other community members to encourage participation in contact tracing.

#### **Background**

The purpose of contact tracing is to identify potentially exposed (and therefore potentially infected) individuals so they can self-quarantine before they spread SARS-CoV-2 in their community. Contact tracing is a core disease-control measure that has been employed by local and state health department personnel for decades. Contact tracing has been used to control outbreaks of other communicable diseases like tuberculosis, measles and Ebola.<sup>1</sup>

Contact tracing is a key tool in reducing transmission of SARS-CoV-2 because both pre-symptomatic (SARS-CoV-2 infection detected before symptom onset) or asymptomatic (SARS-

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/principles-contact-tracing-booklet.pdf>

CoV-2 infection detected but symptoms never develop) individuals are able to transmit the virus to others.<sup>2</sup>

The Centers for Disease Control and Prevention (CDC) identifies contact tracing, a core disease control measure, as a key strategy for preventing further spread of coronavirus.

The CDC outlines certain core principles of contact tracing that must always be adhered to:<sup>3</sup>

- Public health staff works with a patient to help them recall everyone with whom they have had close contact during the timeframe when they may have been infectious
- Public health staff then warn these exposed individuals (contacts) of their potential exposure as rapidly and sensitively as possible
- Contacts are only informed that they may have been exposed to a patient with the infection; to protect patient privacy, they are not told the identity of the patient who may have exposed them
- Contacts are provided with education, information and support to understand their risk, what they should do to separate themselves from others who are not exposed, how to monitor themselves for illness, and informed of the possibility that they could spread the infection to others even if they themselves do not feel ill
- Contacts are encouraged to stay home and maintain physical distance from others until 14 days after their last exposure in case they also become ill
- Contacts should monitor themselves by checking their temperature twice daily and watching for cough or shortness of breath
- To the extent possible, public health staff should check in with contacts to make sure they are self-monitoring and have not developed symptoms
- Contacts who develop symptoms should promptly isolate themselves and notify public health staff; they should be promptly evaluated for infection and for the need for medical care

Contact tracing cases of COVID-19 arising from SARS-CoV-2 presents a different set of challenges from other diseases because, rather than an isolated outbreak, SARS-CoV-2 is simultaneously spreading widely through communities in the U.S. and around the world.

To enable widespread contact tracing, several apps are currently in development or have already been launched. For example, Google and Apple are partnering on COVID-19 contact tracing technology.<sup>4</sup> In the United Kingdom, the National Health Service is developing a contact tracing app.<sup>5</sup> Some of these apps use the GPS location data from a smartphone, or require a worker to wear a device that tracks movements while on the employer's premises, allowing employers to know employees' location at all times while at work. If a worker becomes sick, the employer can quickly identify which other employees the sick employee came in contact with and what physical locations need to be sanitized.<sup>6</sup>

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<sup>2</sup> Furukawa NW, Brooks JT, Sobel J. Evidence supporting transmission of severe acute respiratory syndrome coronavirus 2 while presymptomatic or asymptomatic. *Emerg Infect Dis.* 2020 Jul <https://doi.org/10.3201/eid2607.201595>

<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/principles-contact-tracing-booklet.pdf>

<sup>4</sup> <https://www.blog.google/inside-google/company-announcements/apple-and-google-partner-covid-19-contact-tracing-technology/>

<sup>5</sup> <https://www.hsj.co.uk/free-for-non-subscribers/nhs-developing-coronavirus-contact-tracking-app/7027163.article>, quoted in: <https://preprints.jmir.org/preprint/19359>

<sup>6</sup> <https://www.bytebacklaw.com/2020/04/u-s-privacy-law-implications-for-employers-considering-employee-contact-tracing-apps/>

A review from the Johns Hopkins Bloomberg School of Public Health Center for Health Security in April 2020 identified three additional efforts to develop mobile applications to assist with contact tracing:<sup>7</sup>

- [COVID-19 Watch](#)<sup>8</sup> from Stanford University uses Bluetooth signaling to detect other users in the area; the app will alert users anonymously if they were in contact with someone who was confirmed to be infected with COVID-19
- [CoEpi: Community Epidemiology in Action](#),<sup>9</sup> a voluntary, Bluetooth-based contact tracing app, includes self-reported symptom-sharing to support exposure notification even before confirmation of test results
- [Private Kit: Safe Paths](#),<sup>10</sup> developed by the Massachusetts Institute of Technology, can be integrated into Safe Places, which collects time-stamped location data using Private Kit: Safe Paths data, Google locator history and individual interviews conducted by health departments

Additional efforts to produce app-based symptom tracking and contact tracing include:

- [How We Feel](#),<sup>11</sup> an app which lets users self-report age, gender, ZIP code and any health symptoms they're experiencing; designed to allow scientists and doctors to use the data to better understand how the virus is spreading
- [COVID Symptom Study](#),<sup>12</sup> an app in which users report their current health conditions and status to help researchers conduct a model able to predict COVID-19 cases based solely on symptoms

**Employer Role in Contact Tracing:** During the coronavirus pandemic, employers can play a productive role in helping stop the spread. They can identify infected employees and track, by various methods, any contacts employees may have had while on the job. Employers can then share this information with public health officials, who are primarily responsible for tracing contacts in the community. In so doing, employers can help stop the spread of coronavirus in their workplaces and communities. In line with the White House Guidelines for Reopening America, “employers should develop and implement policies and procedures for workforce contact tracing.”<sup>13</sup>

**Potential Challenges:** Many Americans have concerns about using mobile phone-based contact tracing. A poll conducted May 8–11 found that “only about a third of Americans say they are likely to opt-in to cell phone based contact tracing systems established by the federal government (31%), major tech companies (33%), or cell phone companies (35%).” A bare majority (51%) would join a CDC-sponsored cell phone-based system.”<sup>14</sup> Additionally, there are

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<sup>7</sup> List retrieved from: <https://www.centerforhealthsecurity.org/resources/COVID-19/COVID-19-fact-sheets/200408-contact-tracing-factsheet.pdf>

<sup>8</sup> <https://www.covid-watch.org/article>

<sup>9</sup> <https://www.coepi.org/>

<sup>10</sup> <https://www.media.mit.edu/projects/safepaths/overview/>

<sup>11</sup> <https://howwefeel.org/>

<sup>12</sup> <https://covid.joinzoe.com/us>

<sup>13</sup> <https://www.whitehouse.gov/openingamerica/> Guidelines for All Phases – Employers

<sup>14</sup> Axios-Ipsos Coronavirus Index, May 12, 2020. <https://www.ipsos.com/en-us/news-polls/axios-ipsos-coronavirus-index>. With CDC part of the federal government, it is unknown why a majority of people would support a CDC sponsored system when only 31% supported a system enacted by the federal government.

concerns that contact-tracing apps could violate privacy and civil liberties; be illegally use to harvest data, hold data for longer than needed and be used long after the pandemic is over.

Employers also need to navigate regulatory challenges and should be free to choose from a variety of technology and non-technology based alternatives. Some workplace settings may not allow the use of technology. For example, secure rooms do not allow transmitting devices to be used within these rooms, and employees who spend time in these types of facilities need non-technology options.

Governments around the world have issued more than 60 directives protecting data privacy while responding to the COVID-19 pandemic.<sup>15</sup> Any data collection methodology can be hacked, and employers must also be aware that contact tracing apps could be collecting personal information that is potentially subject to state breach notification laws.<sup>16</sup> Although these laws differ, they generally require entities to notify individuals if there is unauthorized acquisition of personal information. Some of these laws cover medical information and/or biometric information.<sup>17</sup>

CDC, in its guidance on suspected or confirmed COVID-19 cases says: “Employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).” Contact tracing apps, collecting only the data required to know which other employees were exposed to the infected employee, can help employers ensure they inform everyone who may have been exposed.

Employers face a number of legal questions when using contact tracing apps, including:

**Information sharing.** Employers should rely on data generated through testing conducted by their medical providers in response to entry screening and other testing scenarios, information from public health departments conducting their own contact tracing investigations and employees self-reporting positive cases of COVID-19. Employers should use contact tracing apps for purposes such as notifying other employees of possible exposure and to institute sanitation protocols. Employers could also revise incident reporting systems to track positive cases, suspected cases and contact cases.

**Authority to mandate app use on personal smartphones.** Employers will also face challenges mandating the use of any app for contact tracing on employees’ personal mobile devices without federal or state authority. This authority could be issued for the purpose of occupational safety, and would need to be confirmed by the Department of Health and Human Services through HIPAA regulations to provide for employee consent to share any collected medical information. In addition, some state laws (i.e., California Consumer Privacy Act) may need review and adjustment. (If the app is not collecting medical information, this authority would not apply.)

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<sup>15</sup> <https://www.pwc.com/us/en/library/covid-19/global-privacy-impact-assessment.html>

<sup>16</sup> <https://www.bytebacklaw.com/2020/04/u-s-privacy-law-implications-for-employers-considering-employee-contact-tracing-apps/>

<sup>17</sup> Ibid

To mandate app use, employers would need federal or state authority that would include allowing them to remove from the workplace any employee who refuses to the download a contact tracing app, without the potential for legal liability.

**Authority to use information provided by the app.** Employers would need guidance from the Equal Employment Opportunity Commission (EEOC), consistent with the current EEOC guidance, to use the information provided by the app to remove employees from the workplace based on close contact reported by the app without the potential of liability from discrimination laws, including specifically the ADA. Currently, the EEOC states that:

EEO laws, including the ADA and Rehabilitation Act, continue to apply during the time of the COVID-19 pandemic, but they do not interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps employers should take regarding COVID-19. Employers should remember that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety.<sup>18</sup>

**Labor relations.** Under the National Labor Relations Act, employers are required to bargain with their unions regarding employee surveillance devices (historically, location and use of on-site cameras). There are other “conditions of employment” that arise regarding mandating use of contact tracing apps that will need negotiation absent specific guidance from the National Labor Relations Board.

**Reimbursement of cost.** It will be difficult for employers to know how to reimburse employees for the cost of obtaining the app (if any) and using the app. Some states require that employees be reimbursed for required business use of their personal equipment, and employers in those states could be required to pay for a portion of the employee’s mobile phone bill, for example.

**Federal authorization.** Employers currently must contend with differing requirements across state, county and city lines. This burden is significant for employers with multi-state operations. To implement successfully a contact tracing app across a multi-state workforce, employers will require that any federal authority issued supersedes city, county and state laws, regulations and ordinances that would limit or prohibit the use of an employer-mandated contact tracing app.

**Fair Credit Reporting Act (FCRA).** The FCRA requires that employers meet certain notification requirements before taking action based on certain information collected, aggregated and reported by third parties. If employers were required to comply with the FCRA notice requirements before taking action on information provided by the contact tracing app, it would defeat the purpose of the app. Federal guidance is needed to clarify whether the FCRA and similar state laws apply to the information collected and provided through third-party apps for the purpose of symptom checking and contact tracing.

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<sup>18</sup> <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

## **NSC Recommendations for Employer Contact Tracing**

Employers should help public health authorities to the extent possible with their contact tracing efforts.

If an employee is known to test positive for COVID-19, employers, usually through their medical providers, should immediately notify their local public health authorities of the positive COVID-19 diagnosis.

Working with local public health authorities, employers should use contact tracing methods, which may include technology or non-technology related methods, to determine which employees, contractors, vendors and customers that employee came in contact with during their infection period while in the workplace. Working with public health authorities, employers should immediately notify other employees, vendors and/or customers that they may have come in contact with an individual who tested positive or is presumed to have COVID-19.

Employers should also be flexible in allowing employees who were exposed to the sick individual (identified through contact tracing or other methods) to remove themselves from the workplace and self-quarantine for the recommended 14-day period.

To protect employee privacy, employers should utilize methods that provide the maximum protection for employee data. They should only use that data to share with public health officials and others who may have come in contact with the employee after a confirmed COVID-19 case. If utilizing technology for this purpose, employers should seek out apps that keep geolocation data anonymous and encrypted. Employers should put in place systems and policies to assure data is automatically deleted after it is no longer relevant to the purpose for which it is gathered, and to assure that there are specific guidelines for data collection and processing related to COVID-19. Employer privacy policies will need to be updated to reflect the types of data gathered, the employer's use of the data, how employees can expect it will be used and shared and when it will be deleted.

If utilizing technology for tracing, employers should also seek employee buy-in for device-based contact tracing through communications and other strategies. According to a report by PwC, "Employers may not need to take a mandatory approach to achieve that objective if they can win over their employees with clear and frequent communications about how it all works, appealing to the worker's interest in helping to make the workplace safe and productive for everyone."<sup>19</sup>

NSC recommends that U.S. public health agencies develop communication tools targeted for employers to support the need for contact tracing.

*This position statement reflects the opinions of the National Safety Council but not necessarily those of each member organization.*

Adopted by the National Safety Council, June 2020

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<sup>19</sup> <https://www.pwc.com/us/en/library/covid-19/global-privacy-impact-assessment.html>