



# Obligations and rights of Employers and Employees relating to the COVID-19



**Cosmos Services Company Limited.**

**May 2022**

# Impact of 5<sup>th</sup> Wave COVID-19

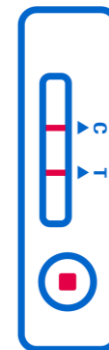
**According to data from Department of Health & the Hospital Authority (till 24/04/2022 00:00),**

- 1,189,229 confirmed cases in total

**As per data of Census and Statistics Department**

- Up to year-end of 2021, Population in Hong Kong is around 7,403,100.

Around 16% of Hong Kong People contracted COVID-19



## With impact of 5<sup>th</sup> Wave COVID-19, Employers will concern:

If the employee contracted COVID-19 but fail to submit medical certificate, what can we do?

If the employee need to undergo compulsory testing, how to handle the day of taking test?

If the employee is under quarantine, how to consider the quarantine period?

Can we dismiss the employee who refused to take vaccination?

Can we collect the COVID-19 related health data from employees?

If we required the employee to receive COVID-19 vaccination / undergo PCR test, how to handle the day of PCR test / taking vaccination?

## QUESTION

If the employee contracted COVID-19 but fail to submit medical certificate, what can we do?

## ANSWER

Employers are advised to accept the Isolation Order issued by the Department of Health (DH) to the employees contracted COVID-19 and follow EO requirements and pay sickness allowance on time to employees who have fulfilled other criteria specified in EO.


i.e. **NOT** necessary to request for medical certificate when employee has already presented Isolation Order


# Isolation Order



## 隔離令 Isolation Order

《預防及控制疾病規例》(第599A章)第23條  
Section 23 of the Prevention and Control of Disease Regulation (Cap. 599A)

本人為衛生主任，有理由相信你，，受到 2019 冠狀病毒病(屬《預防及控制疾病條例》「《條例》」下的指明傳染病)感染。根據《預防及控制疾病規例》「《規例》」第23條，本人現命令你必須即時根據政府命令到社區隔離設施／社區治療設施／醫院管理局轄下隔離設施／其他住宿設施／你的居所接受隔離，直至2022-03-18為止。

I, a health officer, have reason to believe that you, , are infected with Coronavirus disease 2019 (COVID-19) (a specified infectious disease under the Prevention and Control of Disease Ordinance). Pursuant to section 23 of the Prevention and Control of Disease Regulation, I hereby order that you are required, with immediate effect, to be isolated at: Community Isolation Facility / Community Treatment Facility / Isolation Facility under Hospital Authority / other residential facility / your residence as ordered by the Government, until 2022-03-18.

根據《規例》第29(1)條，你不得離開上述用作隔離的地方。《規例》第29(3)條規定，凡未能遵守上述第29(1)條，即屬犯罪。

According to section 29(1) of the Prevention and Control of Disease Regulation, you shall not leave the above said place of isolation. Failure to comply with the said section 29(1) is an offence under section 29(3).


如你已接種至少兩劑新冠疫苗，你可在隔離期的第六天及第七天（2022-03-18為第十四天）進行快速測試。若你在這連續兩天（或其後的任何連續兩天）的快速測試均取得陰性結果，將可於取得第二次陰性結果後視作符合提早完成隔離的條件，而此隔離令已可視為完結。

If you have received at least two doses of COVID-19 vaccines, you may conduct rapid antigen tests (RAT) on the 6th and 7th day of isolation period (2022-03-18 being the 14th day), and if you obtain negative test results during RATs on these two successive days (or any other subsequent two successive days), you may be deemed as fulfilling the condition of ending your isolation early after obtaining the second negative results and this isolation order can be deemed as finished.



  
衛生主任  
Health Officer  
歐家榮醫生  
Dr. Albert Au  
日期/Date: 2022-03-07

Centre for Health Protection, Department of Health 147C, Argyle Street, Kowloon, Hong Kong

本人為衛生主任，有理由相信你，，受到 2019 冠狀病毒病(屬《預防及控制疾病條例》「《條例》」下的指明傳染病)感染。根據《預防及控制疾病規例》「《規例》」第23條，本人現命令你必須即時根據政府命令到社區隔離設施／社區治療設施／醫院管理局轄下隔離設施／其他住宿設施／你的居所接受隔離，直至2022-03-18為止。

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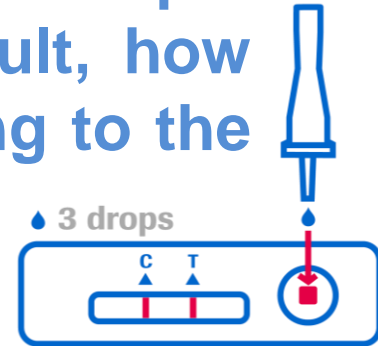
If an employee's self-administered COVID-19 rapid antigen test (RAT) indicates a **POSITIVE** result, how should the employer handle the issues relating to the sickness allowance?

## **ANSWER**

The employers should accept information such as:

- The Isolation Order issued by DH
- The screen image captured upon completion of DH's online declaration and/or photographs, videos showing the employees' RAT positive results

as proof of their sick leave application and the entitlement to sickness allowance



Even if the employees **fail** to submit the medical certificate, the employers are advised to **follow EO** requirements and **pay sickness allowance** on time to the employees who have fulfilled other eligibility criteria as specified in EO.

**\*\*It is NOT necessary for the employer to request for a medical certificate when the employee has already presented the Isolation Order.**



## QUESTION

**If the employee under quarantine, how to consider the quarantine period?**

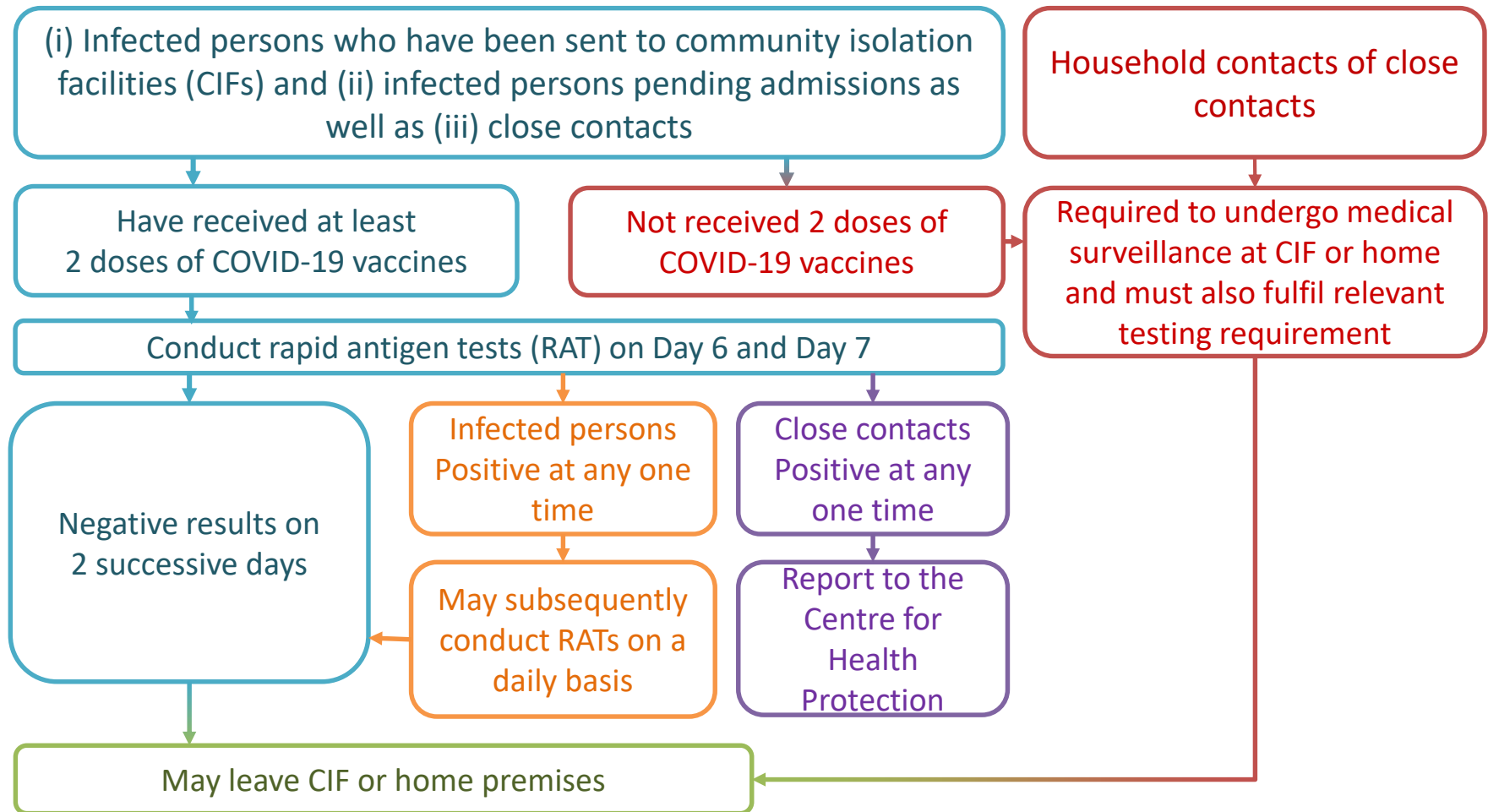
## ANSWER

Upon completion of the quarantine period, DH will issue them a medical certificate / other documentary proof/ information upon request setting out information on the quarantine period and whether they were infected by COVID-19.

If employees satisfies the qualifying conditions as specified in EO, the employee will be entitled to sick leave allowance under EO.



# Criteria for Early Discharge from Isolation and Home Quarantine





## **QUESTION**

**If the employee need to undergo compulsory testing, how to handle the day of taking test?**

## **ANSWER**

As regards to persons who are subject to “restriction-testing declaration” (declaration) to undergo compulsory testing, upon the completion of the restriction requirement, DH may issue a medical certificate or other documentary proof/ information upon request to prove that they were restricted by the declaration during its validity period and attended test(s).

## QUESTION

If we required the employee to receive COVID-19 vaccination / undergo PCR test, how to handle the day of PCR test / taking vaccination?



## ANSWER

The EO does not make provisions for such circumstances. On matters relating to COVID-19 vaccination or testing, employers should maintain good communication with employees to work out relevant arrangements through dialogues so as to maintain harmonious labour-management relations



## QUESTION

Can we collect the COVID-19 related health data from employees?

## ANSWER

It is generally justifiable and reasonable for employers to collect:

- Temperature measurements
- Travel histories
- Vaccination records
- COVID-19 test results
- COVID-19 infection records
- Other COVID-19 related health data from employees

**\*\*From the perspective of the protection of personal data, employers should only collect health data that is necessary for or directly related to the purposes of collecting the data. Personal data irrelevant to or not strictly necessary for the prevention or control of COVID-19 in the workplace should not be collected.**

## Can an employer collect the health data of an employee's family member(s)?

In order to safeguard the health and safety of employees at work, and to ascertain employees who are close contacts of confirmed cases or who are subject to quarantine orders:

- it is justifiable and reasonable for employers to request employees to notify them if the employees are **close contacts** of confirmed cases or are **subject to quarantine orders**.

Under most circumstances, however, collection of the health data of an employee's family member(s), such as their vaccination records, will not be considered necessary or proportionate.

## QUESTION

**Can we dismiss the employee who refused to take vaccination?**

## ANSWER

Up to 20<sup>th</sup> April 2022, the Employment Ordinance related to dismissal of employee who refused to take vaccination as reasonable dismissal still **not yet amended**.

As per Labour Department, it mentioned “Save for those who are unfit for COVID-19 vaccination due to medical reasons, employees should get vaccinated early to support the normal business operation of their employers and to adhere to the epidemic control measures. Instead of simply resorting to dismissal, employers should maintain good communication with employees and provide appropriate assistance to them, including allowing employee to work from home where practicable.”

## Requirement of sickness allowance under EO

**Under the EO, an employee employed under a continuous contract is entitled to sickness allowance (equivalent to four-fifths of the employee's average daily wages) if:**

- The sick leave is supported by an appropriate medical certificate;
- The sick leave taken is not less than four consecutive days; and
- The employee has accumulated sufficient number of paid sickness days;

A large graphic consisting of a dark blue arrow pointing right, with a red chevron pointing right on its left side. The text "Thank you" is written in white inside the blue arrow.

**Thank you**



A large horizontal arrow pointing right, with a red chevron on the left and a grey body.

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