

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

FILED
RICHARD W. NAGEL
CLERK OF COURT
2020 SEP 29 PM 4:52
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

In Re:

FURTHER ORDER REGARDING :
COURT OPERATIONS UNDER THE : **GENERAL ORDER 20-27**
ONGOING EXIGENT CIRCUMSTANCES :
CREATED BY COVID-19 :

**Further Adjustment to the Reconstitution Plan with
Respect to Suspension of Jury Trials, In-Court
Proceedings, Naturalizations, and Grand Jury**

In General Order 20-17, the Court adopted a Reconstitution Plan for reopening the Courthouses in this District as of June 1, 2020. The Reconstitution Plan was attached to and incorporated in General Order 20-17. In General Order 20-23 on July 23, 2020, the Court adjusted that Plan based on recent increases in the number of diagnosed COVID-19 cases in the Southern District of Ohio as a whole and in each of the counties in which one of the District's courthouses is located. Based on sustained high levels of COVID-19 infections in the District, as well as the August 18, 2020, report of its Ad Hoc Committee on Gating Criteria, the Court further adjusted the Reconstitution Plan in General Order 20-25.

Based on the September 15, 2020, report of the Ad Hoc Committee on Gating Criteria and the consensus reached at the District Judges' meeting on September 25, 2020, the Reconstitution Plan is further adjusted as follows:

1. All civil jury trials or other in-person civil proceedings scheduled between the date of this Order and October 31, 2020, are continued until after November 1, 2020, unless the Judicial Officer determines that, in the interests of justice, it is necessary that the proceeding go forward. Such proceedings will take place only in one of the six courtrooms (two at each location of Court)

outfitted with plexiglass shielding. Other proceedings in civil cases shall continue to be held by video or audio conferencing.

2. Criminal jury trials and evidentiary hearings in criminal cases may recommence in Court October 1, 2020. Criminal jury trials will take place only in one of the six courtrooms (two at each location of Court) outfitted with plexiglass shielding. Other proceedings in criminal cases such as plea hearings, sentencings, etc. shall continue to be held by video conferencing unless the defendant declines to consent, or unless the Judicial Officer finds that the interests of justice require the hearing to be held in person. These in-person criminal proceedings are also to be held in plexiglass-outfitted courtrooms. To the extent that such a courtroom is not available, however, and cannot be made available in a seasonable time, the Judicial Officer may hold the proceeding in a courtroom that has not been outfitted with plexiglass. If that occurs, the Judicial Officer must ensure that the parties abide by social distancing requirements in such settings.

3. Any jury trials permitted under this General Order shall be conducted pursuant to the protocol set forth in the Plan for Resumption of Jury Trials attached hereto as Appendix 1 and incorporated herein.

4. Naturalizations as scheduled with Department of Homeland Security personnel to occur off-site (i.e., not in a courthouse) shall continue until further Order of the Court.

5. No grand jury proceedings shall be conducted between the date of this General Order and October 31, 2020, except thirty-day cases, ongoing historical cases requiring the testimony of civilian witnesses, and the small number of “economic impact” cases identified by the United States Attorney.

This General Order does not prevent any proceedings from occurring through use of video- or audio-conferencing capabilities at any time insofar as the same are authorized by law. The fact

that, absent a sealing order by the presiding judge, these will be public proceedings, does not authorize their broadcasting by anyone. S. D. Ohio Civ. R. 83.2 applies to these proceedings. Counsel participating in such video or audio conferences are reminded to be aware of the manner in which background noises can interfere with communication, which in turn may affect the accuracy of the record.

This General Order does not change any of the preventive measures specified in the Reconstitution Plan, including, without limitation:

- Screening all visitors to the courthouses for indications of COVID-19 infection;
- Requiring all Court personnel and visitors to wear face masks in specified locations in the courthouses;
- Requiring all persons in the courthouses to maintain a physical distance of at least six feet from other persons (“social distancing”); and
- Responding to any reported COVID-19 infection in one of the courthouses according to the detailed protocol provided in the Reconstitution Plan.

The Court has adopted this General Order in accordance with current determinations by the Ohio Department of Health and the Governor of the State Ohio, the Centers for Disease Control (CDC) guidelines, the Administrative Office of the United States Courts (AO) guidelines (the Federal Judiciary COVID-19 Recovery Guidelines and the COVID-19 Judicial Task Force Jury Subgroup Report), and the recommendations of its Ad Hoc Committee on Gating Criteria about appropriate measures to be taken to prevent the further spread of COVID-19 in Ohio.

This General Order supersedes General Order No. 20-25 as of October 1, 2020.

IT IS SO ORDERED.

DATED: September 29, 2020



ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**



**PLAN FOR THE RESUMPTION
OF JURY TRIALS**

Purpose

The purpose of this Plan for the Resumption of Jury Trials for the U.S. District Court for the Southern District of Ohio is to provide general guidelines when the Court resumes jury trials which have been affected by the COVID-19 pandemic; provide protocols to minimize the risks and ensure the health and safety of all participants and spectators, including jurors, attorneys, witnesses, parties, members of the public, the press and Court staff; and to supplement the Court's Reconstitution Plan adopted by the Court's General Order 20-17.

Based on the frequency of information and guidance received from national, state, and local officials, the Administrative Office of the U.S. Courts, and other federal courts, flexibility is key in the review and implementation of this Plan.

Executive Summary

Since March 16, 2020, no new civil or criminal jury trials have commenced in the Southern District of Ohio due to Coronavirus Disease 2019 (COVID-19). On June 1, 2020, the courthouses re-opened in accordance with General Order 20-17 and the Court's Reconstitution Plan. In July 2020, Chief Judge Marbley appointed an Ad Hoc Committee composed of Judges Edmund A. Sargus, Jr., Timothy S. Black, Sarah D. Morrison, Walter H. Rice and Kimberly A. Jolson, and Clerk of Court Richard W. Nagel to serve as chairperson. The charge of the Ad Hoc Committee was to select gating criteria to be used to provide a recommendation for the consideration of the Executive Pandemic Team and subsequent recommendation to the Court as to when, in general, it should resume jury trials, naturalizations, grand jury and in-Court proceedings, notwithstanding exceptional circumstances as determined by each respective Judicial Officer. The Ad Hoc Committee, by consensus, selected the following gating criteria: new cases within the Southern District of Ohio; new cases within Franklin, Hamilton and Montgomery counties which are the counties of the three seats of court; new hospitalizations and deaths within the State of Ohio and these three counties; the status of federal inmates housed in county jails within the Southern District of Ohio; and the status of the Orders issued by the Governor of the State of Ohio. The Committee also agreed that the status of the re-opening of schools, including The Ohio State University, be reviewed.

Currently, in accordance with General Order 20-25 entered on August 20, 2020, "all civil and criminal jury trials scheduled between the date of the Order and September 30, 2020, are continued to a further date to be set by the assigned judge, except that, for criminal defendants in custody, a jury trial prior to September 30, 2020, may proceed if the assigned judge deems that, in the interests of justice, it is absolutely necessary that the trial go forward. Such proceedings will take place only in one of the six courtrooms that has been outfitted with plexiglass shielding. In connection with any criminal jury trial continued pursuant to this General Order, the order re-setting the date for the continued trial shall include requisite findings under the Speedy Trial Act."

As new and updated guidance and information become available, the Court recognizes that this Plan will likely require changes and amendments.

Planning for Jury Trials

Advance planning for jury trials should occur given the various operational, logistical and staffing challenges that may result due to the on-going pandemic. Respectively, the presiding Judicial Officer, his or her Courtroom Deputy or Judicial Assistant, Court Reporter, Jury Supervisor, Jury Clerk respective to that seat of court, and the Operations Manager and/or Case Management Supervisor should be involved in this planning. Agencies and key personnel involved in the jury trial may also be consulted and be part of this process which may include the U.S. Attorney's Office, Federal Public Defender's Office and the U.S. Marshals Service.

Advance planning is emphasized for jury trials which may include the staging of mock trials or dress rehearsals involving Court staff to walk-through the various stages of a jury trial. This will allow the Court to assess its state of preparedness and to identify areas which may need to be addressed prior to the jury trial.

Consideration should be given to:

- The different stages of a jury trial and preferences of the presiding Judicial Officer including but not limited to: the voir dire; how sidebar conferences will be handled; how and where attorneys will question witnesses; juror break times which may be needed due to the prolonged wearing of masks; allowance of bottled water in the courtroom for the aforementioned reason; and juror lunch times.
- The number of jurors that need to be summoned to ensure an adequate number for the jury panel.
- Staggered arrival times for jurors to ensure social distancing and where jurors will check-in once they arrive to the courthouse.
- Assigned seating for jurors and the use of "stick on" badges for jurors.
- The movement of jurors and personnel within the courthouse to ensure social distancing including the use of restrooms and elevators, and intricacies/nuances of that respective courthouse.
- Signage throughout the courthouse.
- Inventory, availability and location of supplies which may be needed throughout the duration of the trial to include hand sanitizer, hand sanitizer stations outside of the courtroom and the jury assembly room, disinfectant wipes, facial coverings including masks, face shields for witnesses so that facial expressions may be seen, gloves, microphone covers, bottled water, and plexiglass cleaner.

- Use of jury assembly rooms or other courtrooms for the voir dire, jury deliberation, breaks and lunches. The Court’s Reconstitution Plan includes capacity assessments of courtrooms and jury assembly rooms. The Court has updated information on the seating capacities of the courtrooms with plexiglass shielding. Seating in the courtrooms, jury assembly rooms and other space can be blocked off or accordingly labeled to comply with social distancing.
- Jurors bringing in their own lunches and being responsible for storage of their lunches to avoid potential contamination issues which may result from lunches being placed in common refrigerators.
- Designated marking of the courtroom for public and press seating to ensure social distancing or use of other courtroom(s) for viewing of trial through videoconference technology. If another courtroom is utilized, such courtroom will be staffed by a Court Security Officer.
- Use of exhibits and how evidence will be displayed.
- Methodology for court interpreters and court interpretation services, if applicable.
- Additional cleanings needed for the courtroom, the jury assembly room, and other areas of the courthouse.

Summoning of Jurors

The Court has revised its current Coronavirus (COVID-19) Letter to Jurors in the juror summons packet to include information regarding the additional health and safety precautions implemented by the Court. This includes information regarding the recent visits of county and city health commissioners to review the courtrooms with plexiglass shielding and to communicate expectations to jurors in terms of temperature taking, the asking of health screening questions, and the wearing of facial coverings (Appendix I). In addition, as desired, the supplemental questionnaire can be modified to include specific COVID-19 questions.

Advance communication of the Court’s expectations of jurors should occur to include information regarding the taking of temperatures, the asking of health screening questions, and the wearing of facial coverings. These expectations should be reinforced by Jury staff during new juror orientation. Joint site visits of the courtrooms with plexiglass shielding in the courthouses of the three seats of court have been conducted by respective county and local health commissioners. The county and local health commissioners in all locations have stated that the courtrooms with plexiglass shielding and preparations taken by the Court are in compliance with best practices and directives from the Ohio Department of Health and Centers for Disease Control and Prevention. By revising the supplemental questionnaire as desired, the Jury staff can also ascertain, in advance, any concerns a juror may have with wearing a facial covering; if a

juror is at high risk or has a fear of contracting COVID-19; has childcare or eldercare issues; or is employed in an essential position affecting the juror's ability to serve. A unique COVID-19 excuse has been created in the Court's Jury Management System to track juror deferrals and excuses.

Prospective jurors will be provided with a mask, if needed, upon arrival at the courthouse. Selected jurors will be provided a juror kit which includes disinfecting wipes, hand sanitizer, masks, a pen, and a steno pad.

Scheduling of Jury Trials

Jury trials will begin no earlier than October 1, 2020, and they will be scheduled in the courtrooms outfitted with plexiglass shielding in each seat of court. Each seat of court presently has one set of moveable plexiglass shielding for the jury boxes. The designated courtrooms are as follows: in Columbus, the Chief Judge Marbley and Judge Smith courtrooms; in Cincinnati, the Judge Dlott and Judge Barrett courtrooms; and in Dayton, the Judge Rose and Magistrate Judge Ovington courtrooms.

Based on the size of these courtrooms and operational considerations, plexiglass shielding was installed in these six courtrooms, with each seat of court having one set of moveable plexiglass shielding for the respective jury boxes. As previously referenced in the Court's Reconstitution Plan, an operations subgroup led by the Court Architect conducted a districtwide assessment of court spaces to include jury assembly rooms and district and magistrate judge courtrooms. As previously stated, the Court has updated information on the seating capacities of the courtrooms with plexiglass shielding.

In Columbus, the largest courtrooms were outfitted with plexiglass shielding which are the Chief Judge Marbley and Judge Smith courtrooms. In Cincinnati, the Judge Dlott and Judge Barrett courtrooms are outfitted with modern courtroom technology and are located on the first floor of the courthouse. In Dayton, the Judge Rose and Judge Ovington courtrooms are outfitted with plexiglass shielding. The Judge Rice courtroom was considered for plexiglass shielding, but it is currently unavailable due to construction. Plexiglass shielding has been installed in each of these courtrooms in the following seating areas: the Judicial Officer, the court reporter, the courtroom deputy, the counsel tables, and if logistically needed, the witness stand. Court staff are to use the Calendly application, located on the Court's internal SharePoint site, for scheduling the courtrooms outfitted with plexiglass shielding.

Larger courtrooms allow for increased social distancing and increased numbers of participants in the gallery. Gallery seating in each courtroom will be designated with stickers. Seating arrangements for immediate family and the press should be discussed at the pretrial conference. Other courtrooms in the courthouse can be used for individuals to remotely view the jury trial through use of videoconference technology in the presence of a Court Security Officer.

Due to the current COVID-19 pandemic and limitations which include technological concerns and social distancing requirements, remote jury trials and multi-defendant trials are not being

considered at this time. Off-site locations have been considered, however, the use of off-site locations may pose issues with respect to budget, safety and security.

Jury trials will be initially limited to the scheduling of one jury trial per seat of Court at one time.

Initially, only one jury trial should be scheduled per seat of court at one time, as each seat of court currently has one moveable set of plexiglass shielding for the jury boxes. Additionally, multiple jury trials including voir dres and scheduling space for socially distanced jurors, breaks, lunches and deliberations could prove challenging. Jury trials will also bring more individuals into the courthouses in contact with the Court Security Officers and Court staff, and social distancing must be ensured. Priority should be given to criminal cases due to the Speedy Trial Act.

Facial Coverings

To reduce the spread of COVID-19, jurors are required to wear facial coverings (which include masks) in public common areas of the courthouses, courtrooms, and jury assembly rooms during jury trial proceedings unless advised by the presiding Judicial Officer.

During the jury trial, jurors should remain masked, unless directed by the presiding Judicial Officer. Breaks are recommended every two hours for jurors which will allow for air circulation to take place in the courtroom and for jurors to remove their masks.

Temperature Taking and Health Screening

To reduce the spread of COVID-19, jurors are required to have their temperature taken and satisfactorily respond to health screening questions (Appendix II) at entrances to the Courthouses. Jurors having temperatures greater than 100.4 degrees shall not enter the Courthouses and immediate notification should be made to the Jury Supervisor or Jury Clerk.

Infrared temperature detectors are located at the visitor entrances at each seat of court for the taking of temperatures and jurors will be required to have their temperatures taken daily. In addition to the taking of temperatures, jurors will also be required to satisfactorily answer health screening questions on a daily basis as asked by the Court Security Officers. Although an elevated temperature may not indicate the presence of COVID-19, the taking of temperatures and health screening of jurors on a daily basis are proactive measures to reduce the spread of COVID-19 and demonstrate due diligence on the Court's part to protect jurors to the greatest extent possible.

Cleaning of Courtrooms and Jury Assembly Rooms

Routine disinfection of the plexiglass courtrooms and jury assembly rooms will occur daily during a jury trial. Additional cleanings may occur, if desired, utilizing the established protocol for cleaning which includes a checklist (Appendix III) for the plexiglass courtrooms.

Court spaces are routinely cleaned and disinfected once a day by the custodial staff. Plexiglass cleaner is available for use by the custodial staff on an as-needed basis. Additional cleanings may occur, if desired, utilizing the established protocol for “quick hit” cleanings. A checklist is available for use to identify areas that need to be cleaned. Consideration should also be given to cleaning the witness stand between witnesses.

Positive COVID-19 or Sick Jurors

If a juror communicates that he or she has tested positive for COVID-19 or is exhibiting symptoms of illness during a jury trial, contact tracing should immediately occur using the Administrative Office of the U.S. Courts’ Contacting Tracing Template (Appendix IV) and the General Services Administration shall be immediately notified for further action with respect to cleaning and disinfection of the affected area(s).

Based on contact tracing, further determinations can be made on a case-by-case basis upon consultation with the presiding Judicial Officer which may include requesting the juror to be tested for COVID-19.

Surveying of Jurors

Upon conclusion of the jury trial, jurors should be surveyed upon discharge to obtain information regarding their experience with the Court and the health and safety precautions that have been implemented.

Surveying of the jurors upon discharge will enable the Court to assess jurors’ experiences and to provide useful information for future jury trials.

APPENDICES

APPENDIX I - Letter to Jurors

<Date>

Summoned to Appear for
Jury Selection at the
U.S. District Court in
<Location>
On <Date>

RE: *Your Upcoming Jury Service in the Era of Coronavirus*

Dear Prospective Jurors:

This letter is attached to the Summons directing you to appear for Jury Service on <Date>, at the <Courthouse> at <Address>.

In 2020 the world was introduced to a new contagious virus: Coronavirus Disease (COVID-19). Due to the previous declaration of a national emergency, the Federal Court postponed all jury matters. Pursuant to guidance from The Centers for Disease Control and Prevention (CDC) and our state officials, we have now started to resume regular activities. Court employees have returned to their offices in the courthouse and jury matters have resumed.

We are mindful of the many challenges that our citizens faced during this time of national emergency. We are grateful that because of the courage and sacrifice of so many individuals we are able to continue the administration of justice through the Federal Court system. We are now asking you to continue to fulfill your civic duty by reporting for jury service when summoned.

The U.S. District Court – Southern District of Ohio takes the public health and your safety very seriously. To prevent the risk of infection, we have implemented aggressive policies and are taking extra precautions that include frequently sanitizing counter tops, tables, and doorknobs; having hand sanitizer available; offering large spaces to accommodate social distancing; and restricting access to coffee pots, microwaves and refrigerators. The courtrooms in which jury trials occur are equipped with plexiglass. During breaks, social distancing will be maintained along with mask usage. Jurors will be required to have their temperatures taken and be asked health screening questions by the Court Security Officers upon entering the courthouses. Jurors will be required to wear facial coverings in the public common areas of the courthouses and the courtrooms. Each selected juror will receive a package that contains hand sanitizer and a mask. Joint site visits of the courtrooms with plexiglass shielding in the courthouses of the three seats of court have been conducted by respective county and local health commissioners. The county and local health commissioners in all locations have stated that the courtrooms with plexiglass shielding and preparations taken by the Court are in compliance with best practices and directives from the Ohio Department of Health and Centers for Disease Control and Prevention.

The U.S. District Court – Southern District of Ohio understands that some individuals may be unable to serve at this time due to Coronavirus-related issues. Requests for excuse will be considered on a case-by-case basis and temporary or permanent excuses will be granted as necessary. Requests must be in writing (emails are acceptable) and should be submitted IMMEDIATELY if:

- you were diagnosed with COVID-19 and have not recovered from the virus;
- you have had contact with someone who has been diagnosed with COVID-19 and has not completed a quarantine period;
- you have been asked to self-quarantine by any doctor or other medical provider, hospital, or health agency and are still within that time of self-quarantine;
- you have been experiencing a fever, cough, shortness of breath, or are presently suffering from an elevated body temperature or chills;
- you are a person at high risk of infection;
- you are a person living with others who are at high risk of infection.

We thank you for your patience and for your cooperation as we work together to live safely in a Coronavirus World.

Respectfully,

Algenon L. Marbley
Chief Judge

APPENDIX II – Health Screening Questionnaire

COVID-19 Screening Questions

1) Have you experienced any cold or flu-like symptoms in the last 14 days (to include fever, cough, sore throat, respiratory illness, difficulty breathing or fever at or greater than 100 degrees Fahrenheit)?

2) Has anyone in your household had any of the following symptoms in the last 14 days: sore throat, cough, chills, body aches for unknown reasons, shortness of breath for unknown reasons, loss of smell, loss of taste, fever at or greater than 100 degrees Fahrenheit?

3) Have you or anyone in your household traveled to any of the states listed on the State of Ohio Travel Advisory website* in the past 7 days?

4) Have you or anyone in your household traveled on a cruise ship in the last 14 days?

5) Have you or anyone in your household cared for an individual who is in quarantine or is a presumptive positive or has tested positive for COVID-19?

6) Do you have any reason to believe you or anyone in your household has been exposed to or acquired COVID-19?

7) To the best of your knowledge have you been in close proximity to any individual who tested positive for COVID-19?

*The list of states will be updated every week on Wednesday.

APPENDIX III - Courtroom Disinfecting Checklist

U.S. District Court for the Southern District of Ohio Courtroom Disinfecting Checklist

Date: _____

Time: _____

Number of Participants in Court: _____

Areas which require cleaning:

- Judge's Bench
- Witness Box
- Courtroom Deputy Desk
- Court Reporter Desk
- Counsel Tables. Please specify _____
- Gallery Rows _____
- Jury Room
- Jury Room Restrooms
- Other-Specify _____

Please e-mail the appropriate GSA Service Desk within 15 minutes prior to or immediately after conclusion of the in-Court proceeding.

GSA Cincinnati: cincyworkticket@gsa.gov

GSA Columbus: kinnearyusch@gsa.gov

GSA Dayton: daytonfbusch@gsa.gov

Courtroom cleaning will take approximately 30 minutes from on-site arrival. All efforts will be made to accommodate the Courtroom schedule, however there may be some delays in cleaning from 12pm – 1pm.

APPENDIX IV – Contact Tracing Template

Contact Tracing Template

COVID-19



Once an employee has presented symptoms of Coronavirus Disease 2019 (COVID-19), it is critical for the employee's supervisor to quickly identify the locations the employee has visited and contacts he/she had starting five days before the employee began developing symptoms. Please use the following pages to list the ill employees identified and unknown risk contacts starting five days before onset of symptoms.

Please return this information to <insert POC name and contact information> so that he/she can coordinate the appropriate cleaning of facility spaces.

Talking with Your Employee

After an employee lets the supervisor know he/she has symptoms of COVID-19, please follow up with him/her. You can refer to the paragraph below for ideas to speak with your employee about the people and spaces he/she has been in contact with starting five days before developing symptoms.

"I'm sorry you're not feeling well. As we discussed, please seek out medical attention and do not return to work. Please let us know the outcome of your doctor's visit.

As required, I reported your case to <insert POC name and contact information> and they have asked that you use the criteria in this template to identify people that you were in contact starting five days before you began experiencing symptoms and their risk level."

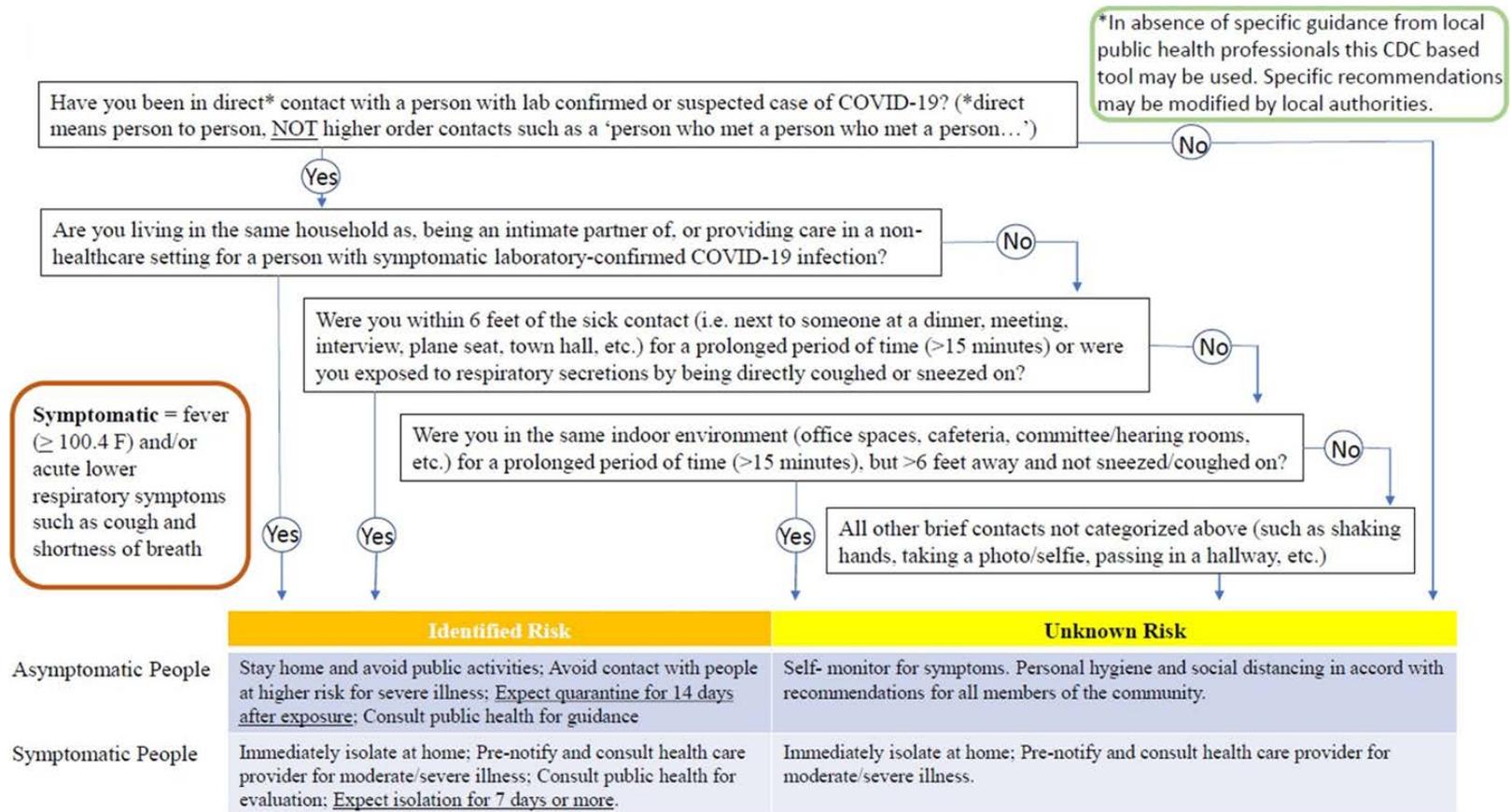
If your employee is comfortable filling out this form on his/her own, e-mail it to the employee. You may also choose to go through it with him/her by asking questions on the phone and writing down the employee's answers.

Determining At-Risk Contacts

Use the Decision Tool at the end of this document to determine which type of contact the employee had:

- Identified Risk
- Unknown Risk

Decision Tool



Self-Monitoring Guidance for Asymptomatic People (per CDC)

Pre-Screen: Measure your temperature daily and assess symptoms each day prior to work, and before entering the worksite. Report abnormal temp. or symptoms to your supervisor.

Regular Monitoring: Continue to self-monitor throughout the day and report abnormal temperature or symptoms to your supervisor. Wear a Mask: always Wear a face mask/covering while in the workplace for 14 days after last exposure.

Social Distance: Maintain 6 feet and practice social distancing as work duties permit in the workplace.