



COVID-19

**BALANCING EMPLOYEE AND STUDENT
PRIVACY AND SAFETY**

Maintaining Privacy and Confidentiality

As we face uncertain times, one major area of concern is how to maintain privacy and confidentiality of students and employees required by law, while simultaneously taking necessary steps to ensure safety.

Privacy laws require institutions to keep certain information confidential but contain specific carve-outs to maintain safety and for public health purposes, including the COVID-19 pandemic.

This presentation will give an overview of privacy laws to be aware of while observing UC's plan and protocols for dealing with the COVID-19 pandemic as the semester begins.

FERPA Privacy Considerations

- The Family Education Privacy Act (FERPA) is a federal law that protects the privacy of students' "education records."
 - Education records are records directly related to a student that are maintained by an educational institution.
- FERPA provides that personally identifiable information (PII) from a student's education records, including student health records, may be disclosed by educational agencies and institutions to appropriate parties in connection with a health or safety emergency (including the COVID-19 pandemic), without the consent, if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
 - "Appropriate parties" for disclosure under this exception typically include law enforcement officials, public health officials, trained medical personnel and parents, but an appropriate party does not include the media.

FERPA Privacy Considerations, cont.

- Keep in mind that presenting information about a COVID-19 positive diagnosis should be done, to the extent possible, in a way that does not personally identify the student.
- If, however, personally identifying information must be disclosed without consent for purposes of protecting the health and safety of the student or others, UC may make the choice to do so.
 - A contemporaneous record explaining the basis for the determination that an articulable and significant threat exists that necessitated the release of this information should be created.

HIPAA Privacy Considerations

- The Health Insurance Portability and Accountability Act (HIPAA) can apply to nonstudents and employees, and to situations where on-site medical staff bill providers for services to students. HIPAA does not apply to a student's "education records" because they are already covered under FERPA.
- UC may not disclose an individual's protected health information (PHI) unless permitted to by HIPAA.
- PHI refers to any information that identifies a patient via their personal or health information, including name, address, Social Security number, photo, ZIP code, treatment date, employer, family information, health condition, or other notable characteristics.
- An individual's COVID-19 status is considered PHI.

HIPAA Privacy Considerations, cont.

- Disclosure of PHI to public health authorities to the extent relevant to the authority and purview of public health authorities is permissible. This includes disclosing positive test results for COVID-19 to state and local health departments, HHS, or the CDC as appropriate. For example:
 - When disclosure is needed to provide treatment;
 - When state law requires reporting of confirmed or suspected cases;
 - Notifying public health authorities for purposes of preventing or controlling the spread of COVID-19;
 - To minimize or prevent exposure to first responders.
- Only as much information as necessary to address the health threat may be disclosed.

ADA Privacy Considerations

- The Americans with Disabilities Act (ADA) protects employees from disability discrimination.
- The ADA requires employers to keep employee medical information confidential and prohibits employers from disclosing the name of any employee with a disease, unless required by federal law, the CDC, or other public health authority.
- The COVID-19 pandemic currently allows employers to seek information about an employee's health that would typically be limited by the ADA.
 - Employers may ask employees if they are experiencing symptoms of the virus, such as fever, chills, cough, shortness of breath, or sore throat.
 - Employers are also allowed to take employees' temperature.

ADA Privacy Considerations, cont.

- Employers must keep the fact that an employee has a fever or other COVID-19 symptom confidential, and must not disclose the employee's identity to other employees to the extent possible.
- The CDC has advised that employers still inform employees of any potential workplace exposure, including, for example, if an employee has tested positive, is suspected to have, or has been exposed to COVID-19.

ADA Privacy Considerations, cont.

- A good rule for balancing privacy and safety of employees and students, while still complying with each of these privacy laws, is to only disclose what is necessary to keep employees and students informed and safe without revealing the identity of the infected individual.
- Exercise caution when disclosing even general information about potential exposure to students and employees, as it may be possible for them to identify the infected individual based on this information.
- Keep these principles in mind as we review UC's COVID-19 plan and protocols.

Initial COVID-19 Testing at UC

- At the start of the semester, UC will conduct COVID-19 testing of all students and employees who will be on campus, and will require that residential students and Graduate Assistants living in University housing quarantine until results are received.
- Those with a negative test result will receive an email from UC to let them know that they may resume normal activities on campus.
- Those who test positive will be notified by a physician and will not be allowed to return to campus. If living on campus, they will be moved to dedicated isolation spaces on campus until the isolation period has ended.

Initial COVID-19 Testing at UC, cont.

- When a student or employee tests positive for COVID-19, they will be contacted by the health department to initiate contact tracing.
- UC will assist with contact tracing and determine if there is a need to decontaminate certain areas or take other preventative measures.
- UC will also perform its own, separate contact tracing. This will require contacting those who have had close contact with the positive test person:
 - While the person was symptomatic;
 - During the 48 hours prior to the person becoming symptomatic;
 - If asymptomatic, between the date of estimated exposure and date of diagnoses or quarantine.

Using the COVID-19 Decision Tree: Evaluating Illness Risk

- The Decision Tree is a tool that will assist in evaluating the risk of a COVID-19 situation based on certain factors. It is, however, important to remember that it is subject to change in order to provide the most up-to-date guidance.
- The different risk categories for COVID-19 situations are as follows:
 - **Highest Risk** – Persons in this category either have tested positive for COVID-19 or exhibits or reports certain severe symptoms.
 - **High Risk** – The person exhibits or reports having a temperature of 100.4°F (38°C) or higher; AND any symptom such as cough, difficulty breathing, sore throat, muscle aches, vomiting or diarrhea, or new loss of taste or smell.
 - **Medium Risk** – The person exhibits or reports a temperature of 100.4°F (38°C) or higher or feeling feverish, cough, difficulty breathing, sore throat, muscle aches, vomiting or diarrhea, OR new loss of taste or smell.
 - **Low Risk** - Where the person exhibits or reports having any of the following symptoms with a likely source that is not COVID-19 related: cough, sore throat, muscle or body aches, vomiting or diarrhea, OR they have been exposed to a COVID-19-positive patient or co-worker while working in a clinical setting with proper PPE and safety measures observed.

Using the COVID-19 Decision Tree: Evaluating Contact Risk

- Individuals who are found to have possibly been exposed to or in contact with someone who is COVID-19 positive must also be placed into risk categories:
 - **High Risk** – The person exhibits or reports a temperature of 100.4°F (38°C) or higher or feeling feverish, cough, difficulty breathing, sore throat, muscle aches, vomiting or diarrhea, OR new loss of taste or smell, AND has had household contact or close contact with a positive patient (confirmed or presumed), traveled internationally, traveled domestically by air, cruise ship, or river cruise, or traveled domestically to a state reporting a positive resting rate of 15% or higher.
 - **Medium Risk** – The individual does not exhibit or report any COVID-19 symptoms but has had household contact or close contact with a positive patient (confirmed or presumed), traveled internationally, traveled domestically by air, cruise ship, or river cruise, or traveled domestically to a state reporting a positive resting rate of 15% or higher.
 - **Low Risk** – The person had contact, but not close contact, with a person with COVID-19 (confirmed or presumed) or travel domestically outside the state of West Virginia.

Using the COVID-19 Decision Tree

- Once an individual has been evaluated and risk level is determined, the Decision Tree provides for safety protocols that must be followed to minimize or prevent the spread of COVID-19 based on risk level.
- These protocols include isolation, self-quarantine, or self-monitoring for symptoms following CDC or local health official guidance. These protocols provide timelines for ensuring that individuals do not return to campus until there is no longer a risk.
- Refer to the Decision Tree for guidance on what quarantine and testing protocols must be observed for each category.

Using the COVID-19 Decision Tree: Conducting a Contact Trace

- Whenever a member of the University community identifies as positive for COVID-19, or develops symptoms of COVID-19 after having an exposure, please complete the Contact Tracing Form.
 - Use a separate page for each day in which the infected person (or presumed infected person) or was on the University Campus or interacting with UC students or employees while symptomatic, during the forty-eight (48) hours prior to becoming symptomatic, or, if asymptomatic, each day between the date of estimated exposure and confirmation of infection and/or quarantine.
- The Contact Tracing Form will be completed with the sole purpose of safeguarding health of the University community during COVID-19 pandemic, will be kept confidential, and will be destroyed consistent with local law and University record-keeping policies.

Using the COVID-19 Decision Tree: Conducting a Contact Trace

- In addition to completing the Contact Tracing Form, the contact tracer should also:
 1. Identify the first day of symptoms for the presumed/infected person. If the symptom onset is not clear, use the earliest suspected date of symptom onset or the date of likely exposure.
 2. Identify the presumed/infected person's work assignment, class and extracurricular schedule and all locations the person visited on campus (e.g., offices, classrooms, dorms, kitchens, locker room, other common areas, etc.) for: (i) each day the person was on campus while symptomatic; (ii) the forty-eight (48) hours prior to becoming symptomatic; and (iii) if asymptomatic, each day between the date of estimated exposure and confirmation of infection and/or quarantine.
 3. For each location, make notes about each person that could have been in contact with the presumed/infected person, including visitors, students and staff.
 4. Identify contacts for each day reviewed as part of Step 2, above.

Using the COVID-19 Decision Tree: Conducting a Contact Trace

5. For each person exposed, investigate the interaction between the presumed infected or infected person and the exposed contact, including:
 - Was the exposed person in “close contact” with another? Close contact is:
 - being within 6 feet (2 meters) of a COVID-19 case (confirmed or presumed) for over 15 minutes or more depending upon the exposure;
 - having direct physical contact; or
 - having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on)
 - Was the presumed/infected person wearing a mask or face covering?
 - Was the presumed/infected person wearing the mask/face covering properly and consistently?
 - Was the presumed/infected employee coughing?
 - What was the nature of the interaction?
 - What was the duration of interaction?
 - How close were the two people?

Using the COVID-19 Decision Tree: Conducting a Contact Trace

5. (Cont.)

- Is the exposed person experiencing (or has the exposed person experienced) symptoms of any of the following since said interaction: Cough, fever, shortness of breath or difficulty breathing, chills, repeated shaking with chills, headache, sore throat, new loss of taste or smell, muscle pain, diarrhea.
- If the exposed person is experiencing any symptoms, explore each of the following:
 - Time of onset for each symptom
 - Whether the symptom(s) continue or have resolved
 - Whether exposed person has sought medical attention/advice for same

6. Determine risk level of all exposed employees based on this tool.

7. Provide notification to all Low, Medium and High-risk individuals identified through contract tracking. You do not need to (but may) provide notice to "no risk" individuals.

- Obtain consent from the positive individual and document it utilizing the Consent Form.
- Refer to the Decision Tree for appropriate language to use depending on whether you do or do not receive consent.

Contact Tracing Form

ATTACHMENT I - Contact Tracing Form

Name: _____ Today's Date: _____

Classification: Student/Employee/Visitor

Date of Diagnosis: _____ First date of symptoms: _____

If asymptomatic, date of estimated exposure: _____

Person will waive confidentiality and allow use of name: Yes / No (if Yes, attach waiver)

Complete a separate page for each day the employee was on Campus

Date: _____

Areas of campus visited: _____

Based on person's memory, schedule and attendance records, note who could have been present:

Identify separately each person with whom the presumed/infected person interacted each day.

Name of person contacted: _____

- Was the exposed person in close contact? Yes / No
- Was the presumed/infected person wearing a mask during the interaction? Yes / No
- Was the presumed/infected person wearing the mask consistently? Yes / No
- Was the presumed/infected person coughing? Yes / No
- What was the nature of the interaction? _____
- _____
- What was the duration of interaction? _____
- How close were the two people? _____
- Was the exposed person wearing a mask or face covering? Yes / No

_____ (Person Contacted) has been informed of exposure and the required monitoring and movement restrictions as of _____ (date/time) by _____

Name of person contacted: _____

- Was the exposed person in close contact? Yes / No
- Was the presumed/infected person wearing a mask during the interaction? Yes / No
- Was the presumed/infected person wearing the mask consistently? Yes / No
- Was the presumed/infected person coughing? Yes / No
- What was the nature of the interaction? _____
- _____
- What was the duration of interaction? _____
- How close were the two people? _____
- Was the exposed person wearing a mask or face covering? Yes / No

_____ (Person Contacted) has been informed of exposure and the required monitoring and movement restrictions as of _____ (date/time) by _____

Use as many sheets as necessary to detail all interactions each day

Consent to Use Name and Personal Private Data

- When a student or employee tests positive, UC will ask for consent to disclose the name of the person to those identified through contact tracing.
- The consent form allows UC to use the individual's name and personal private data to the extent necessary in connection with the positive result to the UC community so that more accurate contact tracing may be conducted.
 - Note: The individual may rescind consent at any time by notifying Janice Gwinn or Virginia Moore.
- If consent is NOT given, the person will not be named in the notice to others, but information concerning the individual's potential exposure will still be provided.

Consent Form

(Note that this form will be available for digital signature)

Limited Release of Confidentiality and Permission to Use Name and Personal Private Data

By signing this Limited Release of Confidentiality and Permission to Use Name and Personal Private Data, I understand, willingly disclose, acknowledge and agree that:

- I have been diagnosed positive with COVID-19 by test result and/or diagnosis by a health care provider (the "Positive Result").
- As a result, I understand, acknowledge and agree that the University of Charleston ("University") must conduct contact tracing in the University community of any individuals with whom I may have had close contact: (i) while symptomatic, (ii) during the 48 hours prior to my becoming symptomatic; and (iii) if asymptomatic, between the date of estimated exposure and date of diagnosis or quarantine.
- Without this voluntarily given permission, the University would not divulge my identity and personal private data when discussing the Positive Result during contact tracing to the extent possible.
- Nonetheless, I voluntarily give the University permission to use and divulge my name and personal private data to the extent necessary in connection with the Positive Result to other employees of the University so that the University may conduct more accurate contact tracing in the University community of individuals with whom I may have had contact.
- This permission only applies to my Positive Result, including my identity as someone with a Positive Result, and only in connection with contract tracing, provided that this waiver does not address or limit any reporting obligations the University may have to a local health department / authority, or the CDC under any government, state, federal or local guidelines or requirements.
- I may rescind this permission by notifying Janice Gwinn or Virginia Moore. Upon such notification that I rescind my permission, the University will then no longer use or divulge my identity and personal private data (to the extent possible) in connection with the Positive Result in accordance with this limited release and grant of permission.

Individual's Name

Individual's Signature

Date

Privacy and Confidentiality of Operations Staff

- Operations staff should also be trained on these same privacy and confidentiality principles, since the assignment of certain tasks may reveal personal information about a student or employee.
 - Consider a situation where a staff member is responsible for disinfecting a classroom where a COVID-19-positive student was recently in class. The staff member will be expected to keep the location of the classroom confidential in order to protect that student's privacy, since revealing the location may very well allow others to identify the infected student.
- Make sure to remind staff members about these expectations when a situation arises where they may learn information that should be kept private and confidential.

Answering Questions of Operations Staff

- Members of the operations staff may also ask you questions about their own personal safety risks.
- Always refer to UC's policies and safety protocols when responding to these types of employee concerns.
- Remind them that protocols are in place to minimize the risk of exposure to all individuals on campus, including:
 - The requirement of face coverings;
 - Social distancing;
 - Proper hygiene and hand washing;
 - Staying home when sick;
 - Completing the daily health survey before each shift;
 - Temperature screenings;
 - Sanitizing personal workstations.