



## COVID-19 Employment Guidelines and FAQ

It is recommended that employers lead with a common-sense approach to what is in the best interests of our employees and customers based on current CDC and EEOC guidance, while complying with OSHA, the ADA, the FMLA, the FLSA, anti-discrimination laws, and applicable privacy laws.

### INQUIRIES AND MANDATORY QUARANTINES

- If there is a reasonable basis to suspect exposure, it is OK to ask an employee questions aimed at determining the employee's threat level to others or possible need for self-quarantine.
- If there is a reasonable basis based on current CDC guidelines that an employee may have COVID-19, it is OK to send them home. Employers have the right to take reasonable measures to protect: (1) the employee; (2) other employees; (3) customers; and (4) the Company.
  - Current CDC guidelines are as follows: if an employer has credible information suggesting: (1) an employee may have been infected with COVID-19; (2) an employee was exposed to an affected area or in close or extended contact with someone who tested positive for COVID-19; or (3) an employee has been in close or extended contact with someone who has recently visited a high risk location per CDC guidance.

### INFECTION CONTROL MEASURES/PROTECTIVE EQUIPMENT

- Employers can require infection control measures (e.g., washing hands, coughing etiquette, etc.), including wearing personal protective equipment, but must provide reasonable accommodations where needed (e.g., non-latex gloves). The CDC has printable posters and notices available that can be posted throughout the workplace.
- In line with CDC guidance, it is permissible to require that employees self-disclose and self-quarantine after:
  - Travel to high-risk locations (as defined by the CDC)
  - Exposure to a family member or other close contact (roommate, physician) who has tested positive for COVID-19 or recently visited a high risk location per CDC guidance
- While employers cannot dictate where employees travel for personal reasons, they CAN:
  - Educate them on the consequences of traveling to CDC-designated high-risk areas (e.g., government and/or Company-mandated quarantine for 14-days)
  - Require that employees disclose personal travel prior to return to work (especially to affected areas and/or international travel)

**Q: What does the CDC recommend employers do?**

**A:** The CDC recommends that employers:

- Emphasize staying home when sick, respiratory etiquette, and hand hygiene
- Perform routine environmental cleaning
- Advise employees to take certain steps before traveling to affected areas
- Instruct employees to notify their supervisors if they have family members with COVID-19

**Q: What is required under OSHA?**

**A:** OSHA governs infectious disease under its general duty clause. If there is a recognized hazard, employers must take reasonable steps to prevent and abate the hazard. Employers are advised to conduct a hazard assessment to determine risk of infection in their industry and adopt appropriate protective procedures (e.g., workplace sanitation and, where there is a credible threat of infection, quarantine).

**Q: Can an employer ask an employee if they are experiencing symptoms of COVID-19?**

**A:** Yes. The EEOC has specifically stated that employers may ask such employees if they are experiencing symptoms of the pandemic virus. However, employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

**Q: Can an employer require an employee with a COVID-19 diagnosis to stay home?**

**A:** Yes. The CDC not only states that employees who have COVID-19 should stay home, but the EEOC has also stated that such a requirement does not run afoul of the ADA.

**Q: What factors should employers consider in determining whether it is “reasonable” to require an employee to stay home?**

**A:** It is generally considered reasonable to require employees to stay home if the employee meets the criteria set forth by the CDC.

Additionally, the Equal Employment Opportunity Commission’s guidance would not forbid an employer from requiring an employee who has COVID-19 or who has been exposed to COVID-19 to stay home as they would pose a “direct threat” to others.

Finally, the Department of Labor has encouraged employers to be flexible during this time because work-from-home can be used for purposes of infection control. Moreover, the Department of Labor has also encouraged employers to allow for telework arrangements if an employee is required to stay home by virtue of a quarantine or government order.

**Q: What factors should employers consider in determining when to return an employee to the workplace?**

**A:** If there is a reasonable basis to suspect that the employee was exposed to the virus, it is advisable to require that they remain away from the workplace for at least the 14-day quarantine period recommended by the CDC.

At this time, the CDC is not recommending that employers request a medical certification in order for the employee to return to work – this is simply to alleviate any burden on the health system. However, the EEOC has suggested that in order to reduce such burden, employees could ask local clinics for a form, stamp, or an e-mail to certify that an individual does not have the pandemic virus.

Additionally, if an employee has taken leave under the FMLA, is considered a “direct threat” under the ADA by virtue of their exposure to COVID-19, or is seeking an accommodation, an employer has the right to request a medical certification.

Finally, where certification may not be possible, and there is a business need to return the employee to work, employers may impose other reasonable requirements to help ensure the employee is not infected (e.g., symptom-free during the incubation period or, where the employee was symptomatic, that they be symptom-free for at least X days without medication, and/or a temperature test before returning to work).

**Q: Can we stop employees from traveling to a restricted country or affected area for personal reasons?**

**A:** No. But we can require employees to tell us if they travel to an affected area.

**Q: Can we require an employee to stay home if they traveled to a high-risk area or may have been exposed such as through family member or other close contact who has contracted COVID-19?**

**A:** Yes, provided it is non-discriminatory, and we have a reasonable belief the employee could have been exposed to the virus.

## REMOTE WORK ACCOMMODATIONS/REFUSALS TO REPORT TO WORK

**Q: Is COVID-19 a “disability” protected by the ADA and other state disability laws?**

**A:** COVID-19 is not a disability but could lead to the development of a disability.

**Q: Are employers required to provide work-from-home accommodations because individuals are concerned about COVID-19?**

**A:** No. Only qualified disabled employees have a right to a reasonable accommodation such as a work-from-home arrangement, provided there is no undue hardship and that the accommodation does not pose a “direct threat” (defined by EEOC) to the safety of self or others. That being said, the Department of Labor has encouraged employers to be flexible during this time because work-from-home can be used for purposes of infection control.

**Q: Can an employee refuse to come to work purely out of fear of being exposed to the virus?**

**A:** Generally not, so long as the employer is taking reasonable protective measures. However, there are some risks with taking action against employees who elect to stay home to avoid exposure.

## TIME OFF OBLIGATIONS AND PAY REQUIREMENTS

**Q: Are employees entitled to leave/time off for COVID-19 treatment?**

**A:** The FMLA applies along with reinstatement rights if an employee or a family member has contracted COVID-19, and other local paid sick and family leave entitlements would also apply just as they would for other illnesses.

**Q: Must we pay employees who stay home sick at our direction or who stay home to care for a sick family member?**

**A:** An employee is always free to take paid leave under applicable policies and procedures. In addition, they may be potentially eligible for unpaid leave under state and federal family and medical leave laws, sick employees and employees caring for family members may be also be eligible for paid sick leave under the applicable local or state laws.

Further, HR 6201 which was signed on March 18, 2020 and effective as of April 2, 2020, requires employers with 500 or fewer employees to provide paid sick leave for up to 80 hours for full-time employees if they: must stay home to care for a family member; are caring for an individual who is subject to an order to quarantine or self-isolate or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or they are caring for a son or daughter who’s school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

**Q: What are the pay considerations for exempt employees who may need to stay home due to issues related to COVID-19?**

**A:** Exempt employees who may be required to stay home due to COVID-19 issues may be able to continue working while at home temporarily, and if this is an option, they should be paid their usual salary. Generally, if an exempt employee works for any period of time during the workweek, they must be paid their full salary.

**Q: What are the pay considerations for non-exempt hourly employees who must work from home during the COVID-19 pandemic?**

**A:** Non-exempt employees must only be paid for hours worked. The Department of Labor's Wage and Hour Division's COVID-19 guidance reminds employers that non-exempt employees shall only be paid for time worked – so, if an employer must close their business and/or send employees home they are not required to pay non-exempt employees, even if they were scheduled to work. In such situations, employees may be entitled to unemployment compensation and other state benefits.

However, employers should evaluate any applicable state wage and hour laws to ensure they do not have additional requirements and/or guidance during this time. Employers may consult their applicable state laws regarding allowable reductions in wages, salary, or hours for exempt and non-exempt employees generally.

**Q: Does an employer need to reimburse employees for cell phone, internet, and/or other expenses while working from home?**

**A:** If an employee who does not regularly work remotely needs to do so during the COVID-19 pandemic, an employer may need to reimburse employees for the additional phone, internet or other expenses incurred. Although the Department of Labor has not stated that employers must reimburse employees, they have advised that if an employer require a non-exempt employee to work from home, employers may not require the non-exempt employee to pay for business expenses, where doing so reduces the non-exempt employee's earnings below the required minimum wage or overtime compensation. Importantly, employers should evaluate any applicable state wage and hour laws to ensure they do not have additional requirements and/or guidance during this time.

**Q: Is paid time available to employees who may be quarantined due to potential exposure or due to workplace closure, but who are not sick?**

**A:** Pay may be required for an employee who is quarantined through different channels:

- They may be eligible for pay for other qualifying reasons, such as school closure or care for a child who is sick with COVID-19 or any other illness.
- Pay may be available based on company business disruption protocols.
- Pay may be available under local sick leave laws if a pandemic is declared locally. Other jurisdictions have similar requirements.
- HR 6201, which is effective April 2, 2020, will require employers with 500 or fewer employees to pay up to 80 hours of sick leave (for full-time employees) if an employee is unable to work due to potential exposure.

## **MEDICAL INQUIRIES/PRIVACY/CONFIDENTIALITY**

**Q: What if employees ask whether a particular person has COVID-19 or is being tested for it?**

**A:** An employer may not reveal an employee's diagnosis as many laws prohibit an employer from providing information that discloses medical information about an employee or their family members (e.g., the FMLA, ADA, and state law equivalents). Employers cannot share specifics about any individual.

**Q:** If an employee was at work for a period of time when contagious with COVID-19, should we share the name of that employee so that employees who may have been exposed can seek testing?

**A:** No, an employer cannot reveal an employee's medical diagnosis. If an employer learns that employees may have been exposed to COVID-19, the employer should generally communicate the exposure or potential exposure without providing information that would identify the individual employee.

**Q: Can an employer require that all employees in a particular location be screened for COVID-19 as a preventative measure?**

**A:** At this time, there is no general "screen" for COVID-19 as testing is very limited and not widely available. If an employer suspects exposure, the best course is to request an employee self-quarantine.

However, the EEOC has stated that, if an employer chooses to "screen" by taking the temperature of employees, that would be allowed under applicable laws because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions.

**Q: What are the rules regarding manager/supervisor exposure/handling of medical information versus HR/safety professionals?**

**A:** Managers/supervisors should not handle medical information or inquire about diagnoses of employees. If an employee voluntarily provides medical information to a manager, the manager should provide HR the information immediately.

## INFECTION CONTROL MEASURES/PERSONAL PROTECTIVE EQUIPMENT

**Q: Can the company require employees to adopt infection-control practices, such as regular hand washing?**

**A:** Yes. Requiring infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal, does not implicate the ADA. Additionally, the Department of Labor and CDC have encourage the adoption of such policies.

**Q: Can the company require employees to wear personal protective equipment (e.g., face masks, gloves, or gowns) designed to reduce the transmission of pandemic infection?**

**A:** Yes. The company can require employees to wear personal protective equipment during a pandemic. However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves) the company should provide these, absent undue hardship.

*This is not intended to be specific legal advice to any particular entity, person, or company. The COVID-19 pandemic continues to evolve on a daily basis as do the federal, state, and local laws pertaining to employers and their response thereto. We advise recipients to seek guidance related to the most up-to-date guidance and regulations.*

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