



Labor & Employment and Health Care ADVISORY ■

MARCH 19, 2020

Coronavirus (COVID-19) FAQs for Employers

For questions about exposure to the coronavirus (COVID-19), we recommend employers obtain guidance from their local public health authority or the CDC about their specific work environment, length/type of exposure to other employees, and the specific individual involved. The following is from published guidance on COVID-19 from the Centers for Disease Control and Prevention (CDC), as well as guidance from the Occupational Safety and Health Administration (OSHA) and the Equal Employment Opportunity Commission (EEOC). Further, state and local laws may differ. A complete list of links can be found at the end.

1. COVID-19 Symptoms

Q. What are the symptoms of COVID-19?

A. The following [symptoms](#) may appear 2–14 days after exposure: Fever, cough, shortness of breath.

2. Employee Diagnosed with COVID-19

Q. What should I do if an employee in my workplace is diagnosed with COVID-19?

- A.
- Get guidance from the [local public health authority](#).
 - [Tell employees who may have had exposure](#) that they may have been exposed to COVID-19, but do not disclose the identity of the employee who is ill.
 - [Send co-employees home if they have been in close contact](#) with the employee or are showing symptoms.
 - [Cleaning and disinfection](#):
 - Close off areas used by the ill persons and wait as long as practical before beginning cleaning and disinfection to minimize potential for exposure to respiratory droplets. Open outside doors and windows to increase air circulation in the area. If possible, **wait up to 24 hours before** beginning cleaning and disinfection.

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- Cleaning staff should clean and disinfect all areas (e.g., offices, bathrooms, and common areas) used by the ill persons, focusing especially on frequently touched surfaces.

3. CDC's Definition of Close Contact

Q. What is "close contact"?

A. The CDC has described "[close contact](#)" as "being within approximately 6 feet (2 meters) of a COVID-19 case for a prolonged period of time" or "having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on)."

4. Symptoms Only, No Diagnosis Yet

Q. What should I do if an employee in my workplace is just showing symptoms (fever, cough, shortness of breath), but is not diagnosed with COVID-19?

A. Employees who appear to have acute respiratory illness symptoms (i.e., cough, shortness of breath) upon arrival to work or become sick during the day [should be separated from other employees and be sent home immediately](#). [Past guidance](#) from the EEOC provides that "[t]he CDC states that employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. Advising such workers to go home is not a disability-related action if the illness is akin to seasonal influenza or the 2009 spring/summer H1N1 virus. Additionally, the action would be permitted under the Americans with Disabilities Act (ADA) if the illness were serious enough to pose a direct threat."

5. Asking Employees for COVID-19 Information

Q. Can I ask an employee if he/she has COVID-19 or if he/she has symptoms of COVID-19?

A. Yes. If you want to confirm whether your employee has COVID-19 or is exhibiting symptoms for purposes of taking CDC-recommended precautionary measures, it is reasonable to ask the employee to confirm whether he/she has symptoms of COVID-19 or if the employee has received a diagnosis of COVID-19 and what that diagnosis is. Once you have the employee's health information, however, you should maintain confidentiality of the identity of the employee. The Department of Health and Human Services [has indicated](#) that "[y]our employer can ask you for a doctor's note or other health information if they need the information for sick leave, workers' compensation, wellness programs, or health insurance." The EEOC has also [stated](#) that "ADA-covered employers may ask such employees if they are experiencing [COVID-19 symptoms]... Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA."

6. Requiring Employees to Self-Report a COVID-19 Diagnosis

Q. Can I require employees to self-report their COVID-19 diagnosis to the company?

A. Yes. If an employee has tested positive for COVID-19, it is reasonable to ask them to contact their supervisor and let their supervisor know.

7. Asking Employees About Household Members

Q. Can I ask about an employee's household members?

A. Based on the CDC's guidance on exposure at home, we suggest that you ask if the employee has recently had close contact with someone who has tested positive or who is exhibiting symptoms of being ill with COVID-19.

8. Employees Who Live with Individuals Diagnosed with COVID-19

Q. What should I do if an employee in my workplace is not showing symptoms, but tells me he/she lives with person who has COVID-19?

A. The [CDC's recommendation](#) is that this person should be sent home and **remain at home and practice social distancing. We suggest reminding co-employees to closely monitor their symptoms and call their health care provider immediately if they develop symptoms suggestive of COVID-19 (i.e., fever, cough, shortness of breath).**

9. Informing Co-Employees but Maintaining Confidentiality

Q. I sent an employee home who was showing symptoms (fever, cough, shortness of breath), but she has not yet been diagnosed with COVID-19. What do I tell co-employees?

A. [According to the CDC](#), for employees in a non-health-care setting who may have close contact with a person who has symptoms but is under investigation for COVID-19, **you should maintain confidentiality but inform co-employees that an employee may be ill, and that they should monitor their health and should call their health care provider immediately if they develop symptoms suggestive of COVID-19 (i.e., fever, cough, shortness of breath).**

10. Requiring Good Hygiene

Q. Can I require employees to thoroughly wash their hands or use hand sanitizer before entering the office or workplace?

A. Yes. The [CDC recommends](#) that employers "[i]nstruct employees to clean their hands often with an alcohol-based hand sanitizer that contains at least 60–95% alcohol, or wash their hands with soap and water for at least 20 seconds. Soap and water should be used preferentially if hands are visibly dirty."

11. Privacy Considerations

Q. What about privacy of medical information?

A. Medical/health information should remain private.

- Though employers should inform other employees about possible exposure, do not identify the specific person or his or her health condition (COVID-19) unless with the person's permission (written permission strongly preferred) or as specifically directed by a public health authority.
- If someone is on self-quarantine, in the hospital, undergoing testing, or possibly ill, only inform other employees that an employee "may be ill" or "is working from home."

12. Doctor's Note

Q. If an employee says he or she has tested positive for COVID-19, does the employer have the right to require the employee to provide a doctor's note or other objective evidence of that diagnosis?

A. Yes, but we recommend against disciplining the employee if they are unable to produce a note. The [CDC recommends](#) that employers "not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way." Given that health care providers may be overwhelmed, [OSHA's COVID-19 guidance](#) recommends that employers maintain flexibility by not requiring a health care provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work. [According to HHS](#), "Your employer can ask you for a doctor's note or other health information if they need the information for sick leave, workers' compensation, wellness programs, or health insurance." The [EEOC says](#), "Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus."

13. Possible Customer Exposure

Q. If an employee working in a customer-facing role was diagnosed with COVID-19, should we report to government authorities and/or customers that may have come into contact with the employee?

A. We recommend reporting the potential contact to public health authorities (local or state health department and the CDC) and cooperate with public health authorities in identifying contacts, but letting the public health authorities conduct contact tracing (i.e., contact the customers that were potentially exposed).

14. Enhanced Cleaning Routines

Q. Do we need to enhance our cleaning routines in customer-facing locations?

A. We recommend following [CDC recommendations for environmental cleaning](#) and disinfecting.

15. Customer Wearing a Face Mask

Q. If a customer is wearing a face mask, can we deny them entry into our store or facility?

A. There are many reasons that a person may wear a face mask. For instance, some people who are immunosuppressed may wear face masks in public at the recommendation of their health care provider. There are also ADA public accommodation requirements that could be violated with blanket denial of access to a store or facility. For these reasons, we do not recommend a blanket policy of denial of entry to a store or facility.

16. Employees and Face Masks

Q. Can I refuse an employee's request to wear a face mask?

A. Probably, but not recommended. Under the OSHA respiratory protection standard, 29 C.F.R. 1910.134, which covers the use of most safety masks in the workplace, a respirator must be provided to employees only "when such equipment is necessary to protect the health of such employees." Given the [consensus](#) that face masks are only necessary when treating someone who is infected with the coronavirus or influenza, masks are likely not necessary to protect the health of most employees. Therefore, most employers do not generally have to provide, or allow employees to wear, a surgical mask or respirator to protect against the spread of COVID-19 or influenza. However, as a practical matter, employees may feel safer if they can wear a face mask, and some employees may have disabilities that put them at high risk for complications.

17. Taking Employees' Temperature

Q. Can I require employees to report or provide their temperature before entering the office or workplace?

A. According to [CDC guidance](#), it would be prudent to tell your employees not to come to work if they have a temperature of 100.4° F and to call their supervisor. Asking "Do you have a fever over 100.4° F" would be acceptable. **Note that individuals who have COVID-19 may be asymptomatic for a number of days before having a fever. Therefore, employers should understand that a lack of fever is not evidence that an employee does not have COVID-19.**

Whether an employer can take their employee's temperature is more complex. The EEOC recently published "[What You Should Know About the ADA, the Rehabilitation Act, and COVID-19](#)." In that guidance, the EEOC says that "[g]enerally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever."

Therefore, temperature testing for employees requires an assessment of whether the pandemic is severe and widespread (as determined by state or local health authorities or the CDC) in the locality where the screening/testing takes place. Again, note that **individuals who have COVID-19 may be asymptomatic for a number of days before having a fever**. If you determine that temperature testing is warranted, you should maintain the information as a confidential medical record. It would also be prudent for you to maintain some documentation that a local/state health authority or the CDC has determined that the pandemic is severe and widespread in case an employee alleges a violation of the ADA related to the temperature testing.

18. Travel

Q. Can I require employees to notify the company of any personal travel plans (e.g., an international flight or a vacation cruise)? Can I ask about their prior travel?

A. Yes. It is reasonable to require employees to notify you of international travel. Although you generally cannot prohibit employees from domestic or international travel on their personal time, there are several important reminders that you can and should provide to employees. [OSHA guidance](#) advises that employers should communicate to workers that the State Department cannot provide Americans traveling or living abroad with medications or supplies. In addition, the guidance notes that, as COVID-19 outbreak conditions change, travel into or out of a country may not be possible, safe, or medically advisable, and as other governments respond to a COVID-19 outbreak by imposing public health measures that restrict domestic and international movement, the U.S. government's ability to assist Americans will be further limited in these countries. According to the [EEOC](#), you can also ask questions about exposure to COVID-19: "If the CDC or state or local public health officials recommend that people who visit specified locations remain at home for several days until it is clear they do not have pandemic influenza symptoms, an employer may ask whether employees are returning from these locations, even if the travel was personal."

Cited links

- [CDC: coronavirus disease 2019 \(COVID-19\) symptoms](#)
- [NACCHO: Directory of Local Health Departments](#)
- [CDC: Interim Guidance for Businesses and Employers](#)
- [CDC: Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 \(COVID-19\) Exposures: Geographic Risk and Contacts of Laboratory-confirmed Cases](#)
- [CDC: Environmental Cleaning and Disinfection Recommendations](#)
- [EEOC: What You Should Know About the ADA, the Rehabilitation Act, and COVID-19](#)
- [EEOC: Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)
- [HHS: Employers and Health Information in the Workplace](#)
- [CDC: Preventing the Spread of Coronavirus Disease 2019 in Homes and Residential Communities](#)
- [OSHA: Guidance on Preparing Workplaces for COVID-19](#)
- [EEOC: Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act \(ADA\)](#)
- [WHO: Coronavirus disease \(COVID-19\) advice for the public: When and how to use masks](#)

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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