

COVID-19 Frequently Asked Questions (FAQ) for Employers

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Employer and Employee Rights in the Workplace

What rights does an employer have if it has evidence that an employee has been exposed to COVID-19?

Employers have a duty under OSHA's General Duty Clause to provide a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees. If an employer has evidence that an employee has been exposed to such recognized hazards (for instance, a family member with whom they live has COVID-19), an employer may require that the employee work from home or take a leave for the 14-day quarantine period.

What steps can an employer take to reduce the risk of exposure to and transmission of a coronavirus?

Be aware of travel advisories issued by the federal government and avoid business travel to areas where there has been a COVID-19 outbreak.

Employers should consider:

- Postponing business trips
- Changing the location of the business trip
- Conducting the business remotely

In addition, advise employees to follow standard recommendations for protecting against a range of illnesses, including:

- Avoiding close contact with anyone showing symptoms of respiratory illness such as coughing and sneezing
- Maintaining basic hand hygiene (frequent handwashing, using alcohol-based hand sanitizer, etc.)
- Refraining from touching one's eyes, nose, and mouth
- Regularly cleaning and disinfecting frequently touched items and surfaces
- Seeking medical care early when experiencing potential [symptoms of COVID-19 \(coronavirus\)](#)

What do I do if an employee has tested positive for COVID-19?

The employee should be sent home, or be required to remain at home. The employer should determine, through direct discussions with the employee, who else the employee has come in contact with or worked in close proximity with (within a few feet) through or at work during the previous 14 days.

Any such employees also should be sent home on the basis that the employer has reasonable cause to believe the employee has come into contact with an employee who is infected with COVID-19 (coronavirus). The infected employee must not be identified by name, in order to ensure the employer is not violating medical privacy laws.

Can I ask employees to tell me that they have been exposed to COVID-19?

Yes, employers can, and probably should, make this request of employees. As noted above, employers have a general duty to maintain a workplace free of hazards under OSHA.

The [Americans with Disabilities Act](#) (ADA) prohibits an employer from making disability-related inquiries of employees, except under limited circumstances. An inquiry is "disability-related" if it is likely to elicit information about a disability.

Requiring employees to tell employers if they have been exposed to COVID-19 is not likely to elicit information about a disability. However, employers must ensure that they protect the confidentiality of any medical information they receive from or about individual employees.

Can I require employees to be tested for COVID-19?

Employers should absolutely ask that employees voluntarily report if they have tested positive for COVID-19. As previously mentioned, employers have a general duty to maintain a workplace free of hazards under OSHA, and it may constitute negligence for an employer not to request that employees self-report illnesses.

As a general rule, however, employers do not have the right to require employees to undergo particular medical examinations. The [Americans with Disabilities Act](#) (ADA) prohibits requiring medical examinations of employees unless the employer has a reasonable belief based on objective evidence obtained prior to the inquiry that: (1) an employee's ability to perform essential functions of the job will be impaired by a medical condition, or (2) an employee will pose a direct threat to others and to the business due to a medical condition. It is possible that the COVID-19 pandemic will rise to the "direct threat" level and thus justify testing and reporting under the second prong of the test.

But not all pandemics are severe enough to trigger the direct threat prong. Whether there is a "direct threat" that warrants required testing or reporting of test results will depend on the circumstances at any given time. We recommend, consistent with EEOC guidance, that employers rely on the CDC for guidance on this issue.

Can I take an employee's temperature at work to determine if there is a possibility that they have COVID-19?

Taking an employee's temperature constitutes a medical examination, which may be asked of the employee but not (usually) required. Accordingly, see the guidance above, which applies here as well.

Can I require an employee to leave work if they have symptoms that may indicate they have COVID-19?

Yes. The CDC specifically recommends that employees who exhibit influenza-like symptoms (in this case, COVID-19-like symptoms) during a pandemic should not be at work. The EEOC has advised during past pandemics (such as the 2009 H1N1 pandemic) that requiring workers to go home due to exhibiting influenza-like symptoms does not implicate disability concerns. If an employee exhibits symptoms, you can require them to leave work and seek medical attention. Note that in certain states, if the employee has paid sick leave available, *the employer must provide such leave and compensate the employee under applicable paid sick leave laws.*

Your company policies regarding paid time off (holidays, vacation, sick leave, etc.) will determine whether you should provide paid leave to employees who are not at work. There currently is a proposed bill to provide free testing, benefits, and paid leave to employees. [Families First Coronavirus Response Act](#)

In addition, employees who become ill from a workplace exposure to COVID-19 (or other illnesses) may be eligible for workers compensation benefits. Accordingly, employers must take reasonable steps to mitigate the risk of such claims. One effective method for doing that is to require sick employees to not come to work.

Can I require an employee who is out sick with a pandemic illness to provide a doctor's note, submit to a medical exam, or remain symptom-free for a specified amount of time before returning to work?

Yes. However, employers should consider that during a pandemic, healthcare resources are overwhelmed, and it may be difficult for employees to get appointments with doctors or other health care providers to verify that they are well or no longer contagious.

During a pandemic health crisis, under the [Americans with Disabilities Act](#) (ADA), an employer is allowed to require a doctor's note, a medical examination, or a time period during which the employee has been symptom free, before it allows the employee to return to work.

In situations in which an employee's leave is covered by the FMLA, the employer may have a uniformly applied policy or practice that requires all similarly situated employees to obtain and present certification from the employee's health care provider that the employee is able to resume work. Employers are required to notify employees in advance if the employer will require a [fitness-for-duty certification](#) to return to work. Employers should be aware that fitness-for-duty certifications may be difficult to obtain during a pandemic.

Can I require an employee returning from days away from work due to illness to report the symptoms they were experiencing that kept them out of work?

The short answer is yes, so long as the questions are limited to whether the employee has had symptoms akin to that of COVID-19 (coronavirus) or influenza. The EEOC has taken the position

that an employer may ask if an employee is experiencing flu-like or COVID-19-like symptoms if the employee reports being ill during a pandemic.

NOTE: Employers must be careful, however, to limit questions to whether employees are experiencing flu-like or COVID-19-like symptoms, as inquiries beyond that may become problematic. Complications from many illnesses, including flu-like illnesses, often do rise to the level of a disability, so questions designed to determine if any employee has a compromised immune system, or might be more likely to suffer complications of a particular illness, are not permissible.

What should be done if a worker becomes sick with COVID-19 and is required to be quarantined?

For employees who are nonexempt under the [Fair Labor Standards Act \(FLSA\) and state wage- and hour laws](#), employers are not required to compensate employees for any time not worked. However, it may be a best practice to provide some sort of compensation during this time.

Exempt employees, in contrast, if they work any part of a workweek, must be paid their salary for the full week. If an exempt employee does not work at all during a workweek, salary payment is not required. Employers [may require employees to use PTO, sick or vacation time](#), as well.

Does an employer need to pay employees who are not working?

Generally, no. But, employers should also keep in mind the public relations aspect of not paying wages during this time, as it may be damaging to employer reputation and employee morale.

Federal and state minimum wage and overtime requirements are related to the hours worked, so nonexempt employees who are not working are not typically entitled to wages. However, exempt employees paid on a salary basis must be paid their salary if they perform any work during a seven-day workweek.

If I learn that an employee is ill or has been exposed to COVID-19, what can I tell co-workers?

The CDC recommends that if any employee is confirmed to be infected with COVID-19, employers should inform other employees of their possible exposure to COVID-19 in the workplace, but maintain confidentiality and medical privacy. Employers cannot name the ill or exposed employee to coworkers.

Confidential medical information may include an employee's symptoms of COVID-19 and diagnosis with COVID-19. An employer may only disclose this confidential medical information to a limited group, including supervisors, safety and first-aid personnel, workers' compensation carriers, and government officials. An employer cannot share this information with co-workers or customers in a way that would identify the employee.

Because many privacy laws are a matter of state law, employers should also review applicable state privacy laws or state versions of federal laws prohibiting discrimination or disclosure on medical grounds.

Is COVID-19 covered under the FMLA?

It depends. Assuming the employee satisfies the [FMLA eligibility criteria](#) and suffers complications that arise from COVID-19 that may create a serious health condition that is covered under the FMLA. Also, if an employee is caring for a family member with a serious health condition, that leave may be protected under the FMLA.

However, leave taken by an employee for the purpose of avoiding getting sick would not be protected under the FMLA. Employers should review any applicable state FMLA laws.

During the COVID-19 pandemic, what types of health disclosures are allowed under HIPAA?

A recent [notice](#) from the US Department of Health and Human Services (HHS) provided some clarity on the application of the Health Insurance Portability and Accountability Act (HIPAA) privacy rules as they pertain to COVID-19.

Under HIPAA, protected health information (PHI) may be used and disclosed "when necessary to treat a patient, to protect the nation's public health, and for other critical purposes."

According to the notice, PHI may be disclosed for the purpose of preventing or controlling disease, injury, or disability, as well as at the direction of a public health authority or to individuals at risk if authorized by law.

HIPAA also permits disclosures to family, friends, and others identified by the patient as involved in the patient's care and "as necessary to identify, locate, and notify family members, guardians, or anyone else responsible for the patient's care, of the patient's location, general condition, or death." The bulletin notes, "This may include, where necessary to notify family members and others, the police, the press, or the public at large."

Remote Workforce

Can I encourage or require employees to telework as an infection control strategy?

Yes. An employer may encourage or require employees to telework. However, employers cannot single out employees either to telework or to continue reporting to the workplace on a basis prohibited by any of the EEO laws.

The Equal Employment Opportunity Commission (EEOC) has stated that remote work is one strategy to control transmission of COVID-19 (coronavirus). Employees with disabilities that put them at high risk for complications associated with COVID-19 may request to work remotely as a reasonable accommodation to reduce chances of infection. See article: [Work at Home/Telework as a Reasonable Accommodation](#)

How can managers determine whether a particular job can be performed at home?

Managers should meet with their employee to identify and review all of the essential job functions. An employer does not have to remove any essential job duties to permit an employee to work at home. However, it may need to reassign some minor job duties or marginal functions (i.e., those that are not essential to the successful performance of a job) if they cannot be performed outside the workplace and they are the only obstacle to permitting an employee to work at home.

Several factors should be considered in determining the feasibility of working at home, including the employer's ability to supervise the employee adequately and whether any duties require use of certain equipment or tools that cannot be replicated at home.

Other critical considerations include:

- a need for face-to-face interaction and coordination of work with other employees
- whether in-person interaction with outside customers is necessary
- whether the position in question requires the employee to have immediate access to documents or other information located only in the workplace.

An employer should not, however, deny a request to work at home as a reasonable accommodation solely because a job involves some contact and coordination with other employees. Frequently, meetings can be conducted effectively via video calling and telephone, and information can be exchanged quickly through e-mail.

In the event a business requires all employees to work at home, do employers have to pay those employees who are unable to work from home?

When not all employees can work from home, it is important to consider additional options to promote social distancing, such as staggered work shifts.

Under the FLSA, employers generally only have to pay employees for the hours they actually work, whether at home or at the employer's office. Salaried exempt employees must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions. Reference the U.S. Department of Labor [Wage and Hour Division](#) for additional information.

Do OSHA's regulations and standards apply to the home office? Are there any other federal laws that employers need to worry about if employees work from home?

The Department of Labor's Occupational Safety and Health Administration (OSHA) does not have any regulations regarding telework in home offices. However, employers who are required to keep records of work-related injuries and illnesses will continue to be responsible for keeping such records for injuries and illnesses occurring in a home office.

Employers are encouraged to work with their employees to establish hours of work for those who telework and a mechanism for recording each teleworking employee's hours of work. Non-exempt employees must receive the required minimum wage and overtime pay free and clear.

What should be included in a remote work policy?

A remote work policy communicates employer expectations in a clear and consistent manner to remote workers.

A workplace policy should address:

- The process for making remote working requests
- Equipment and supplies
- Reimbursements for equipment purchased to perform work (phone, internet, office supplies)

- Safety concerns
- Wage and hour issues, particularly regarding nonexempt employees
- Duration of arrangement

Traveling During the Pandemic

May an employer require an employee to travel for business despite the employee's fears of COVID-19?

It depends. If an employee expresses concern over traveling due to COVID-19 (coronavirus), evaluate the reasonableness of the concern.

For example:

- Is there a travel ban or advisory for the area to where the employee would be traveling, or would the employee be traveling to a different part of the country than the coronavirus-affected area?
- Does the employee have a medical issue, such as a compromised immune system, that increases the risk of infection?
- Is the employee refusing all business travel on an airplane or other mass transportation, regardless of destination?

Under Occupational Safety and Health Administration (OSHA) standards, an employee can refuse to work only where there is an objectively reasonable belief that there is "imminent death or serious injury." If the risk of infection low, it is unlikely that an employee could prove that they have an objective belief.

Can I ask employees to tell me where they are traveling?

Yes. An employer may ask about employees' travel to areas affected by a pandemic illness, even if the travel is personal.

However, employers should be mindful to avoid any action that could result in a claim of national origin discrimination. Employers should ensure that any travel-related inquiries or restrictions are based on legitimate business-driven reasons, and not the national origin of the employee.

During the COVID-19 (coronavirus) pandemic, may an employer require employees to disclose their recent travel locations or prohibit employees from traveling to a non-restricted area on their personal time?

Employers must be aware of potential discrimination and privacy implications. If an employer wishes to ask about recent travels, there should be guidance in place that ensures that employees disclose when they or family members have been in areas affected by COVID-19. Employers may provide information to their employees about the dangers of travel and can monitor employees returning from travel for symptoms.

If I know an employee has been exposed to COVID-19 (coronavirus), or has traveled to an area affected by COVID-19, can I ask them to not come to work for 14 days?

Yes. An employer that reasonably believes that an employee has traveled to a high-risk location and has been exposed to COVID-19, they may ask that the employee not return to work for 14 days per CDC recommendations.

Employers should also consider whether sick or exposed employees who are sent home need to be paid for days missed, whether the exposure was work related, whether a sick employee's illness is covered under the FMLA or other protected leave.

Can I require employees traveling back from an affected area to stay home?

Yes. You have the ability to ask an employee returning from an affected area (or exposure to a person with the disease) to stay home, but step softly. The incubation period for COVID-19 (coronavirus) is typically 14 days.

If someone develops the disease, they may be contagious for longer. Potentially, this much time off could be a real hardship for employees. In addition, be sure a factual basis exists for a decision to exclude someone from the workplace—do not single out people of a specific national origin or race.

Employers may send an employee home who appears to have symptoms of a contagious illness. Requiring medical certification would also be an option after a third consecutive absence. Keep in mind that an employer would need to cover any out-of-pocket expenses for obtaining the certification.

Safety Guidance

Does OSHA consider COVID-19 a recordable illness?

Yes, the Occupational Safety and Health Administration (OSHA) has deemed COVID-19 a recordable illness if an employee is infected while on the job. If a worker contracts the virus while at work or traveling for work, an employer would be required to record the illness according to Occupational Safety and Health Act (OSH Act) requirements. State-plan states may have additional requirements.

What safety guidance should employers be following?

OSHA has published Guidance on Preparing Workforces for COVID-19. For information on this guidance, [see OSHA Issues Coronavirus Guidance for Workplaces](#). Employers with a current influenza pandemic plan in place may need to update it to address exposure sources and risks specific to COVID-19.

I have a public-facing employee who wants to wear a mask - do I have to let the employee wear a mask?

There is no legal requirement that employers must permit employees to wear a mask in most industries and workplaces. For most employees requesting to wear a mask, it is a matter of peace of mind. It is truly a business decision that must be made taking into account all relevant circumstances.

If employees are permitted to wear a mask, employers should also advise the employees that they must wear it consistently, and not just in the presence of certain employees or visitors. This may avoid any suggestion that the employees' conduct is discriminatory against certain ethnic groups.

Do I need to provide masks to my employees?

There is no legal requirement that all employers must provide their employees with masks. Any requirements generally depend on circumstances such as the employer's industry, the employee's position, and the employee's working conditions.

If the employer permits the wearing of masks, but chooses not to provide them, employers should provide an explanation of that decision, by explaining in writing that the government has not issued any instruction for employers outside specific industries to require the use of masks for prevention of coronavirus/COVID-19, and therefore, the company is not currently requiring or recommending that employees utilize masks with regard to COVID-19.

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RESOURCES

<https://www.paynefears.com/insights/my-employees-could-have-covid-19-what-now>

<https://www.eeoc.gov/policy/docs/qanda-inquiries.html>

<https://www.dol.gov/coronavirus>

[SHRM Coronavirus information and resources](#)

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The information, other material, and resources contained in this email and FAQ are for general guidance and informational purposes only, designed to improve your general understanding of the current employer responsibility's surrounding COVID-19, and do not constitute legal advice. The application and impact of laws can vary widely based on the employer's state and specific facts involved. Given the changing nature of laws, rules and regulations there may be delays, omissions, or inaccuracies in information contained within this document.