

You Have Coronavirus Questions In Your Workplace? We Have Answers

Since clients are asking, we wanted to take an opportunity to compile some of these questions and answers for your workplace in order to provide our corporate clients and friends with some workplace guidance during this rapidly evolving situation.

Q1: As the coronavirus pandemic escalates, how much information may an employer request from an employee who calls in sick to protect the rest of its workforce?

A1: Pursuant to Equal Employment Opportunity Commission (EEOC) [Guidance](#) on the topic, under the [Americans With Disabilities Act](#) (ADA), employers may ask such employees if they are experiencing flu-like symptoms, such as fever or chills and a cough or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA. If coronavirus is like the flu, i.e., seasonal, these inquiries are not disability-related. However, if the coronavirus becomes severe, the inquiries, even if disability-related, are justified by a reasonable belief based on objective evidence that the severe form of coronavirus poses a direct threat.

Q2: Does the ADA allow employers to require employees to stay home if they have symptoms of the coronavirus?

A2: Yes. Employees who show flu-type symptoms at work during a pandemic should leave the workplace, according to the EEOC's guidance and the CDC ([Interim Guidance for Businesses and Employers to Plan and Respond to 2019 Novel Coronavirus \(2019-nCoV\)](#)). Advising such workers to go home is not a disability-related action if the illness is akin to the seasonal flu. Additionally, the ADA permits such action if the illness were serious enough to pose a direct threat.

Q3: How long can we require an employee with symptoms of respiratory illness to stay home?

A3: According to the CDC, you can require such employees to stay home until they are fever- and symptom-free for at least 24 hours.

Q4: When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

A4: Yes. The ADA permits such inquiries because either they would not be disability-related or, if the pandemic was 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 are swamped and may be just too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Either do not require such documentation, or allow employees to obtain certification from a local clinic with a form or email certifying that an individual does not have the pandemic virus.

Q5: Should we, as an employer, be supplying masks to employees?

A5: No. There is a shortage of masks needed for healthcare workers. What you *can* provide are posters (links on the CDC's site [here](#)) that encourage employees to stay home when sick, advising about proper cough and sneeze etiquette, and hand hygiene. The CDC also encourages employers to provide tissues, no-touch receptacles, hand sanitizer, and instructions on handwashing and use of hand sanitizer.

Q6: What about cleaning? Should we invest in deep cleaning for our workspace?

A6: The CDC recommends routine cleaning of all frequently touched surfaces and that employers provide disposable wipes so that commonly used surfaces such as doorknobs can be wiped down by employees before each use. The CDC does not recommend any particular cleaning product or additional disinfection beyond routine cleaning at this point.

Q7: Do I have to allow my employees to telecommute if they are concerned about the coronavirus?

A7: Employers should maintain flexible policies that permit employees to stay home to care for a sick family member. Employers should be aware that more employees may need to stay at home to care for sick children or other sick family members than is usual. If an employee is worried about exposure to the virus because of some objective evidence that they could potentially be exposed to individuals who may have returned from China, you can allow them to telecommute. Employees should not be disciplined for refusing to work if they believe that there is a risk of infection because making such a complaint may be a protected activity. If the employer can establish that there is **no basis** for any exposure to the disease, the employee does not have to be paid during the time period the employee refuses to work.

Q8: My company has several trips abroad planned over the next few months. Do I have to cancel them?

A8: No. There is no need to cancel planned business travel unless said travel is to China, South Korea, Iran, or Italy to which the CDC recommends that travelers avoid all nonessential travel, or to Japan, to which the CDC recommends postponing travel for older individuals and those with chronic medical conditions. Communicate with your employees about any travel modifications. Knowledge often alleviates anxiety.

Q9: Are there any proactive communication measures that we, as a company, should take to help and protect our employees?

A9: Yes. You can communicate with them about ways to stay healthy at work (but do not give medical advice), what your organization has done to increase hygiene in the workspace, and provide options for telecommuting if an employee or someone in the employee's family is ill ,and provide information reminding employees about the various paid and unpaid leaves offered by the company and available under federal, state, or local law. Examples include leave under the Family Medical Leave Act, state paid sick leave under various state and local laws, disability benefits if such payments are provided in an employer's benefit plan. Further, organizations might consider an emergency response plan to deal with an outbreak or closure.

Q10: Can I separate an employee from other employees if they seem sick at work? Wouldn't that be discriminatory?

A10: No and yes. You can and should separate from others any employee who appears to have an acute respiratory illness demonstrated by symptoms such as a cough or shortness of breath. Then, send them home.

Q11: Can I require any employee returning from travel out of the country to work from home or take paid or unpaid leave for 14 days before they come back to work?

A11: It depends where the person traveled. Employers may require employees to stay home for the 14-day incubation period if they are returning from locations with high infection rates such as China, South Korea, Italy, or Iran.

Q12: As an employer, is it lawful for me to take the temperature of all of my employees?

A12: If the Centers for Disease Control and Prevention (CDC) or a state or local health authority proclaims a pandemic has spread in an area, then yes, it is; otherwise, it is not, according to Equal Employment Opportunity Commission (EEOC) guidance. In its [guidance on ADA requirements during pandemics](#), the EEOC states that a temperature test is a medical examination within the meaning of the ADA. Therefore, if a pandemic has an area, as assessed by state or local health authorities or the CDC, employers may measure employees' temperatures without violating the ADA.

For more answers to these and other questions, check out **this resource**. For more information about the coronavirus, you can visit the CDC [here](#), or the WHO [here](#). * All answers to these questions derive from the CDC, WHO, or EEOC websites.

For additional information, please contact any of the following: Amy Epstein Gluck at amy.gluck@fisherbroyles.com, Eric Meyer at eric.meyer@fisherbroyles.com, or any of the attorneys in our [FisherBroyles Employment Practice Group](#) with any questions or more specific situations.

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