

COVID-19 FAQs

Workplace Infection Control Practices Impacting Employees

These general FAQs have been prepared to provide general guidance for employers in connection with the 2019 novel coronavirus/COVID-19.

1. May employers ask employees about geographic areas where they have traveled or intend to travel?

A: Yes, absent a claim that an employee has a recognized privacy interest in their travel activities. Employers should take steps to reduce any reasonable expectation of privacy that employees might have in those activities.

2. May employers bar asymptomatic employees from entering the workplace if they have traveled to designated WHO or CDC affected regions?

A: Yes, as long as employers act consistently based on travel activities and do not say or do things to suggest they believe such employees actually have a physical or mental impairment, such steps should not violate the Americans with Disabilities Act or other federal, state or local EEO laws. Employers must remember that states and localities may provide greater protections than federal law.

3. May employers bar asymptomatic employees from entering the workplace if a household member has traveled to designated WHO or CDC affected regions?

A: Yes, given the close contact ordinarily experienced by household members, employers usually would be justified in barring employees from entering the workplace in these circumstances.

4. May employers require asymptomatic employees who have traveled to affected regions or had close contact with such individuals remain at home for the presumed 14-day incubation period?

A: Yes.

5. Must employers pay employees who are denied access to the workplace?

A: Absent a contractual commitment to pay, including an applicable collective bargaining agreement, no federal law requires employers to pay non-exempt employees for time they do not actually work. Federal or state wage hour laws may require exempt employees to be paid their regular salary if they are directed not to report to work. Some state or local laws may impose additional pay

obligations for certain occupations, especially if employers provide little or no advance notice that employees are not to report to work as scheduled.

6. May employers require employees who have been asked to remain home due to COVID-19 infection concerns to provide notes from healthcare providers confirming they are capable of returning to work?

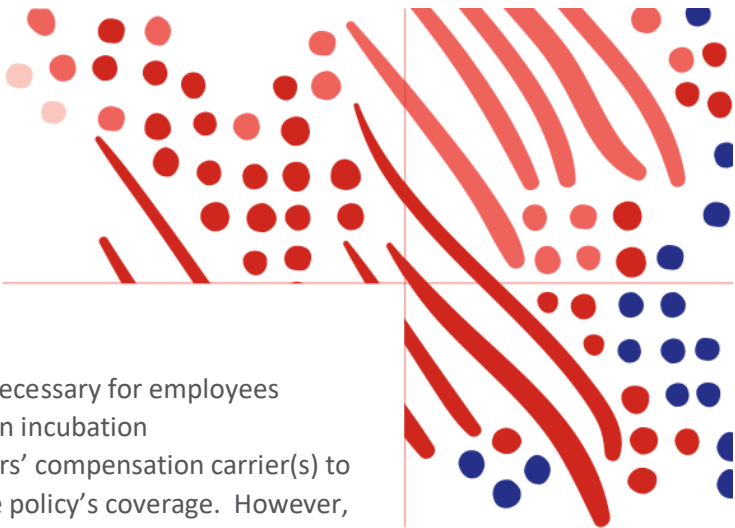
A: If employers do not require disclosure of medical information, they likely can require notes confirming employees are capable of returning to work without violating the Americans with Disabilities Act because the request would not be disability related. If employers sought information that was found to be a disability-related inquiry under the ADA, we currently anticipate it likely would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, public health authorities have warned that doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Previously, the EEOC has suggested employers consider new approaches to obtaining fitness for duty information, 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.

7. May employers require employees confirmed for COVID-19 infection to test negative for COVID-19 infection before they return to work?

A: Yes, such inquiries should satisfy ADA standards for disability-related inquiries or medical examinations, however, as a practical matter, testing capacity may be limited and employers may need to consider other reliable methods to certify that an individual does not have the pandemic virus. Employers must also remember that states and localities may provide greater protections than federal law.

8. What responsibilities do employers have to employees while they are working from home?

A: For non-exempt employees, the employer should take steps to ensure that all work time is recorded and paid, as well as any overtime. We recommend that employers who anticipate having employees working from home for an extended period of time prepare a simple agreement for employees to sign acknowledging their understanding of the arrangement including the employee's obligation to maintain a safe workspace as well as the temporary nature of the arrangement. Telecommuting arrangements should make clear that employees are expected to maintain safe conditions at the home office and to practice the same safety habits as he/she would in his/her office on the



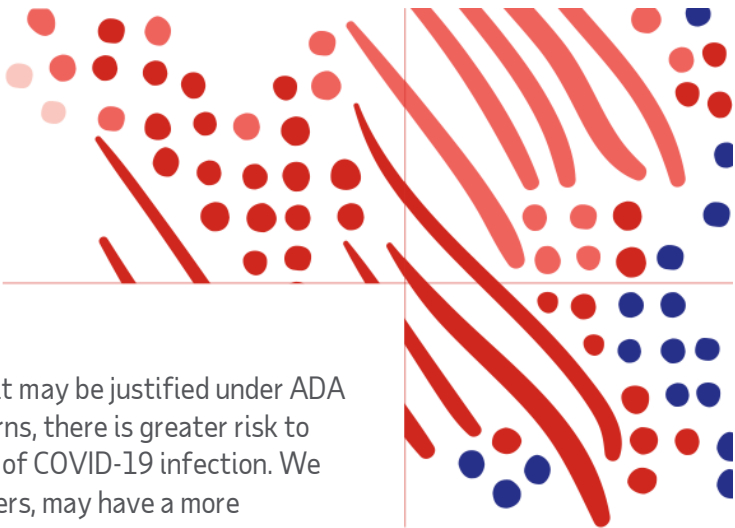
employer's premise. This is likely not practical or necessary for employees asked to work from home for only 14 days during an incubation period. Employers should consult with their workers' compensation carrier(s) to ensure that telecommuting employees fall with the policy's coverage. However, the telecommuting policies and/or agreements should state that the employer assumes no responsibility for injuries that occur in the employee's home office outside the agreed upon "work hours." The telecommuting policy should also state that the employer assumes no responsibility for injuries to third parties who may be present at the employee's home office. Employers should also determine what expenses they will reimburse in this situation. In some states, including California, employers are required to reimburse the employee for reasonable cost of any internet and phone service needed to perform work duties. There may also be tax implications of the employee working from home.

9. What other steps should employers take to ensure employees work effectively from home during a pandemic?

A: Employers should ensure that the company's IT infrastructure supports the employee(s) working from home and that the employee has the equipment, whether company-provided or personal as well as internet connection to perform all required work. Employers should consider communicating to employees their general expectations including: (1) while working from home, the employee will still be expected to complete their work assignments, be available during regular business hours and communicate with their supervisor and others as needed; (2) the employee should continue to adhere to all Company policies; (3) the employer retains discretion to permit, or not permit or discontinue a telecommuting arrangement at any time; (4) employees are responsible for maintaining the confidentiality of all work-related information and follow the company's confidentiality policies. These items can be covered in the agreement mentioned above. Under these unique circumstances, employers may need to consider making their work from home arrangements more flexible than usual. For example, if employees are asked to work from home due to community spread of the virus, children are likely to home from school.

10. May employers ask employees if they have symptoms of COVID-19 infection?

A: The EEOC has not provided clear guidance on this question. What is clear that any disability-related inquiry must be job-related and consistent with business necessity under the ADA. With very limited exceptions not likely applicable for most employers implementing COVID-19 infection control procedures, this requires some individualized basis to be concern that a specific employee may not be able to perform essential job functions safely or successfully. If an employer had some individualized basis for asking a specific employee whether



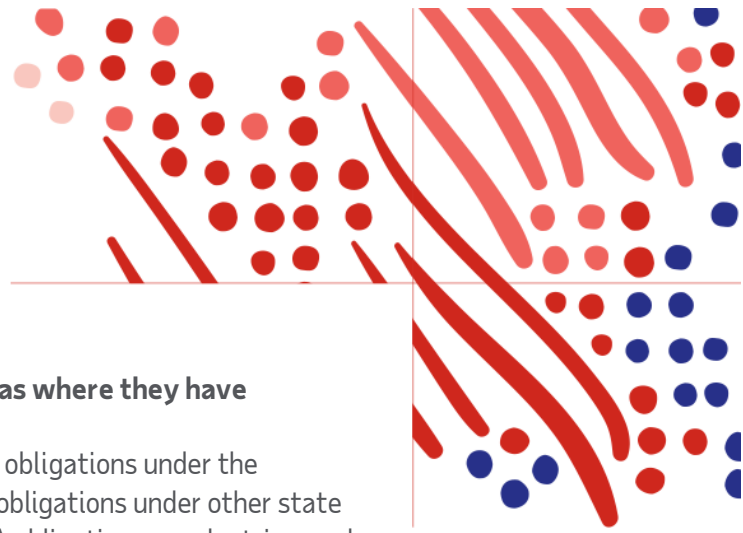
he/she had symptoms of COVID-19 infection, then it may be justified under ADA standards. Absent individualized fact-based concerns, there is greater risk to asking all employees whether they have symptoms of COVID-19 infection. We expect some employers, such as healthcare employers, may have a more persuasive argument that asking all employees if they have symptoms of COVID-19 infection is permitted under the ADA. In its 2009 Guidance on Pandemics, the EEOC also drew a distinction based on the stage and severity of pandemics. In responding to question as to whether an employer could measure an employee's body temperature during a pandemic, the EEOC stated that "if pandemic influenza symptoms become more severe than the seasonal flu or the H1N1 virus in the spring/summer of 2009, or if pandemic influenza becomes widespread in the community as assessed by state or local health authorities or the CDC, then employers may measure employees' body temperature." According to the EEOC, measuring an employee's body temperature is an ADA medical examination. Therefore, even if asking an employee if they have symptoms of COVID-19 infection were determined to be a disability-related inquiry, it should be lawful under the ADA if the pandemic is more severe than seasonal flu. The EEOC noted in its 2009 Pandemic Guidance that employers should be aware that some people with influenza, including the 2009 H1N1 virus, do not have a fever. The same has been reported for COVID-19 infections.

11. May employers send employees home if they develop symptoms of COVID-19 infection?

A: Yes. An employer never has to allow a sick employee to remain at work. The CDC states that employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. The EEOC has stated that 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 EEOC has stated that such actions would be permitted under the ADA if the illness were serious enough to pose a direct threat.

12. May employers ask visitors to their business locations to disclose the geographic areas where they have traveled before authorizing their entry to their premises?

A: Yes, absent a claim that visitors have recognized privacy interests in their travel activities, businesses may ask them if they have traveled to areas of concern.



13. Does asking visitors to disclose the geographic areas where they have traveled trigger any privacy obligations?

A: Yes, such requests may trigger notice of collection obligations under the California Consumer Privacy Act (CCPA) or similar obligations under other state privacy laws. If inquiries are made in Europe, GDPR obligations may be triggered.

14. If employees claim COVID-19 infections arose out of work-related contacts, are such claims covered by workers' compensation benefits?

A: Workers compensation coverage may be available in connection with provable workplace exposures that lead to infection and COVID-19 disease, but will depend on state law. This may provide some protection for employers concerned about potential liability and damages. However, where there is wide-spread community spread of the virus, it may be difficult if not impossible to prove that the exposure that lead to infection occurred at work.

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