

COVID-19 Frequently Asked Questions—Based on EEOC Guidelines Updated on March 18, 2020

03.26.20

How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?

During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic? *(This presents the practical problem, of course, of how an employer obtains and maintains an adequate supply of sterile thermometers or other temperature measuring devices.)*

Generally, 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.

Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

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

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.

If an employer is hiring, may it screen applicants for symptoms of COVID-19?

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.

May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?

Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?

Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

Can facemasks be required?

Employers cannot generally require employees to wear facemasks or respirators, and should not allow employees to wear them voluntarily. OSHA has a series of highly detailed regulations and specifications for respirators and other devices

intended to protect employees from inhaling or breathing dangerous substances. Those regulations are complex and expensive to comply with and, in all likelihood, a company which is not already using respirators will not have the requisite training, equipment and experience to allow respirators and facemasks to be used on a voluntary basis. If the company is not required to provide respirators and other protective equipment to its employees, it may – and should – refuse to allow its employees to voluntarily wear such devices.

What should employers do if an employee is diagnosed with the coronavirus?

There is currently no legal requirement for a company to notify health authorities or other employees. An employer's general duty to provide a safe workplace remains in effect, however. Given the highly contagious nature of this virus, employers may find it necessary to both advise other personnel that an employee has been diagnosed and take further steps to disinfect the area or otherwise protect other employees from the virus. If such a disclosure is made, the employee should not be identified, either by name or other information which would lead to identification of the infected employee.

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