



Coronavirus Frequently Asked Questions (“FAQs”) for Employers

March 10, 2020

The novel coronavirus (“COVID-19”) has many employers concerned, especially after the World Health Organization (“WHO”) declared a public health emergency. Employers are facing a number of employment law issues, including how to protect health and safety, ensuring that employees receive proper pay and benefits, and what to do about employee travel and quarantines.

To assist employers in navigating these difficult issues, Felhaber Larson has developed a list of FAQs for employers to consider. Yesterday, the U.S. Department of Labor also released additional guidance for employers, which is available [here](#) and [here](#).

Remember, each situation is different and there may be facts in one situation that necessitate a different result than the answer provided below.

Health and Safety

FAQ: I have an employee who arrived at work very ill. The employee is coughing violently and making others uncomfortable. What should I do?

Answer: Send the employee home. Of course, any decision regarding sending an employee home must not be based on the employee’s race, sex, age, or disability, including perceived disability.

Tell the employee to remain home until they feel better. To encourage employees to comply, you may even want to consider providing additional paid sick leave or allowing employees to work from home during this time.

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

Answer: Not at this time, although, this may change as things develop and CDC/EEOC guidance changes. Generally speaking, the ADA prevents employers from requiring medical examinations or conducting medical inquiries unless they are “job-related and consistent with business necessity” or if the employee poses a “direct threat” to the workplace. Nevertheless, you can still ask the sick employee to go home until symptoms alleviate and/or ask the employee to stay home for a 14-day period.

According to 2009 guidance from the EEOC, an employer may be justified in measuring employees’ body temperatures if state or local health authorities or the CDC determine that an outbreak is severe. The EEOC noted, however, that requiring testing of asymptomatic employees would violate the ADA: “making disability-related inquiries or requiring medical examinations of employees without symptoms is prohibited by the ADA.”

In the end, because it is neither a medical exam nor a medical inquiry, an employer is free to advise employees to check their own temperatures and advising employees to stay home if they have a fever.

FAQ: Should I require employees to wear facemasks?

Answer: There is no requirement for employees to wear respirators or other types of personal protective equipment (“PPE”) while at work. 29 C.F.R. § 1910.132(a)(2). In fact, the CDC recently stated that it **does not yet recommend** wearing facemasks or any other PPE by the general public at this time.

For healthcare employers, the CDC has a resource page dedicated to PPE, which is available [here](#).

FAQ: What can we do to prepare for the unfortunate event that one of our employees is exposed, or if the virus emerges in our area?

Answer: Time is valuable here. Thus, it is important to have a plan in place prior to any event and to respond efficiently and effectively to any issue that may arise relating to COVID-19.

If you suspect any of your employees may have been exposed to COVID-19, or has recently traveled to an area where the virus is active, suggest asking the individual to either work from home (if possible) or self-quarantine for a two-week period after returning.

If an employee is absent because of COVID-19 diagnosis, “an employer would be 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.”

FAQ: What if an employee came into work sick with COVID-19 and potentially exposed numerous other employees and/or clients?

Answer: If this occurs:

1. Investigate and send home any employee who may have been exposed. You may even want to consider temporarily suspending your operations while investigating the breadth of the exposure.
2. Contact federal and state authorities, including the [CDC](#) and the [local Department of Health](#) to alert them of what happened. They will then work with you on what to do.
3. If an employee is diagnosed at a hospital, the hospital will also likely report to the CDC and/or the local Department of Health and they will intervene to help you investigate and potentially sanitize your workspace.

Pay and Benefits

FAQ: Do I have to pay employees if I send them home?

Answer: You should apply your regular paid time off policies (sick leave, vacation, PTO) and make those policies available to employees who are staying home because they are ill. Salaried exempt employees need to be paid their regular salary for any week where they perform work. You can, however, deduct any absences from their leave bank. Non-exempt employees only need to be paid for their hours worked, but, to encourage sick employees to stay home, ensure that they know paid leave is available.

You may also wish to consider relaxing your work-from-home policies during this time to allow employees to work from home during this period. For employees who are unable to work from home, particularly non-exempt employees who have exhausted paid leave, consider providing additional paid sick days to encourage employees to stay at home if they are ill.

FAQ: Do I have to provide Family and Medical Leave Act leave to employees who are sick with COVID-19?

Answer: It depends. The Family and Medical Leave Act (“FMLA”) requires that a qualified employer must provide job-protected leave to any qualifying employee who has a “**serious health condition.**” While influenza and mild cases of COVID-19 are probably not serious health conditions under the FMLA, more serious cases or cases involving complications may be a “serious health condition.” If so, it triggers the employer’s responsibility to offer FMLA leave.

Employee Travel

FAQ: My employees travel frequently and attend numerous conferences – what should we do?

Answer: We recommend temporarily suspending all non-essential travel until things improve.

If some of your employees must travel to any high-risk areas overseas, encourage them to register with the state department, take appropriate precautions (masks, gloves, exercise judicious hygiene practices, limit any potential exposure to large crowds, and pack extra supplies in the event of the employee being quarantined or stranded in another country). Information from the CDC about traveling can be found [here](#).

FAQ: What if an employee contracts COVID-19 while on a work-related trip or in the course of their duties?

Answer:

1. Instruct the employee to self-quarantine at home for at least 14 days.
2. Consider requiring testing at the end of the quarantine in order to verify that the employee is negative for COVID-19.
3. Thereafter, consider having them remain home until asymptomatic and/or fever free for at least 24 hours.

The illness may be covered by workers’ compensation. This is especially true for healthcare employees who may come into direct contact with the virus if it escalates.

Privacy

FAQ: What information can I share with my employees if another employee was diagnosed with COVID-19?

Answer: Employers must balance the confidentiality of the sick employee with the safety of your workspace. As such, we recommend disclosing to your workers of the possible exposure to the workspace so those workers can take preventative measures (such as cleaning their workspace and social distancing). However, we recommend not disclosing the identity of the sick and/or quarantined individual because the ADA, HIPAA, GINA, and other state and federal laws may apply which prohibit such disclosure.

FAQ: Can I ask employees whether they are experiencing symptoms consistent with the COVID-19?

Answer: Yes, employers may ask employees if they are experiencing COVID-19 symptoms such as fever, cough, and shortness of breath. Federal and state laws require the employer to treat the employee’s response as a confidential medical record. Employers should maintain the information in a separate, confidential medical file.

Other Issues

FAQ: Should I be concerned about discrimination?

Answer: Yes. It is important to be aware of your obligations under various state and federal antidiscrimination laws during the COVID-19 outbreak. With numerous employers prohibiting employees from traveling to certain areas, or requiring employees who are returning from certain countries to quarantine themselves, it may disproportionately impact certain individuals. As such, ensure that you are neutrally and impartially applying all policies in order to prevent any discrimination.

In addition, employers should take steps to prevent discrimination and harassment against individuals who are disabled or perceived as disabled because they are exhibiting symptoms suggestive of having contracted coronavirus.

FAQ: Should I send anything to my employees?

Answer: While this is a decision every employer must make on their own, it is wise to send something to your employees to begin implementing some of the guidance discussed throughout this FAQ. The more your workers know to wash their hands, sanitize their workspaces, cover their coughs, and stay home when sick, the higher the chance you may avoid any disruptions.

If you have any questions regarding the above, please contact Penelope J. Phillips at (612) 373-8428 or pPhillips@felhaber.com or any of **Felhaber Larson's employment law experts**.

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