



CDC Guidelines & the Americans with Disabilities Act

Under its current guidance on COVID-19, the CDC advises that:

- Employees who have symptoms of acute respiratory illness are recommended to stay home and not come to work until they are free of fever and any other symptoms for at least 24 hours, without the use of fever-reducing or other medicines.
- If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace.

While employers should follow the CDC's guidelines, employers also should be careful not to run afoul of the ADA.

- The ADA prohibits employee disability-related inquiries or medical examinations unless they are job-related and consistent with business necessity.
- Employers should maintain confidentiality and not identify the employee or explain the reason an employee is not at work. Communications with employees about illnesses and medical conditions should be kept confidential. Related documents should be kept in a location separate from the employee's personnel file.

Notwithstanding the ADA's prohibitions, employers may still take the following steps:

- Send employees home if they display symptoms consistent with COVID-19, such as fever, cough, and shortness of breath.
- If the CDC or state or local public health officials recommend that people who visit specified locations remain at home for a specified time after their return, an employer may ask whether employees are returning from these locations, even if the travel was personal.
- Normally, requiring employees to submit to temperature checks would be considered an impermissible medical examination/inquiry under the ADA. If pandemic symptoms become widespread in the community as assessed by the CDC or state or local health authorities, then employers may measure employees' body temperatures at work. It is reasonable to assume that temperature checks would become permissible if COVID-19 becomes prevalent in the community in which an employer is located.

- ADA-covered employers may ask employees who report feeling ill at work, or who call in sick, if they are experiencing symptoms consistent with COVID-19. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.
- Employers may require employees who have been away from the workplace during a pandemic to provide a doctor's note before allowing them to return to work.

If any such measures are taken, employers should ensure that they are acting consistently and not on the basis of any impermissible discriminatory basis such as national origin or age.

Family and Medical Leave Act

If an employer is covered by the FMLA (50 or more employees within 75 miles of a work location) and if an employee otherwise qualifies for FMLA leave (employed for 12 months and worked 1,250 hours within the last 12 months), employees with COVID-19 would qualify for FMLA leave. In addition, an employee who is taking care of a qualifying family member with COVID-19 would be permitted to take protected FMLA leave.

For more information please contact Andy Clark at 713.351.0338 or via [email](#).