

Handling suspected COVID-19 in the workplace – dos and don'ts

A single employee with COVID-19 can threaten an entire business operation. Employers may fear that sending home a sick worker can trigger legal liability under the Americans With Disabilities Act (ADA) or other federal or state law. For the most part, safe harbors built into the ADA protect employers as long as they establish a set of criteria and stick to them.

The Equal Employment Opportunity Commission (EEOC) updated its 2009 guidance for the H1N1 flu to [address COVID-19](#). Coupled with [guidance](#) from the Centers for Disease Control (CDC), the two provide a roadmap for employers.

Addressing the potentially contagious employee

Although asymptomatic employees can spread COVID-19, employers can only address what they can see and measure. According to the EEOC, employers can send employees home without violating the ADA if “the illness is akin to seasonal influenza or if the illness is serious enough to pose a direct threat to the employee or coworkers.”

The CDC advises employees to stay home if they have symptoms of acute respiratory illness and a fever (greater than 100.4 degrees Fahrenheit or 37.8 degrees Celsius, using an oral thermometer). Employers should use this standard and apply it to all employees equally.

Employers may also send home or bar from work asymptomatic employees who have been exposed to COVID-19 as defined by the CDC. If an employee:

- Has had close contact with;
- sat on an aircraft within 6 feet (two airline seats) of, or
- lives in the same household as, are an intimate partner of, or are caring for at home, for a symptomatic individual with laboratory-confirmed COVID-19.

The CDC defines a person as symptomatic if they have a fever over 100.4, coughing, or difficulty breathing.

Because the intent is to shield other workers from illness, employers may ask these questions without violating the ADA's prohibition on posing questions that could reveal a disability.

Employees who have traveled recently

Employers may send home employees who have traveled to areas where there has been “widespread transmission” of COVID-19. This means areas that are included in a [CDC Level 3 Travel Health Notice](#). Currently this includes China, Iran, the United Kingdom and Ireland, and most European countries.

Again, these moves must be applied uniformly. Employers may not take the employee's national origin or other protected characteristic into consideration when evaluating the threat each employee poses to the workplace.

Returning to Work

Generally, the CDC recommends that a person be symptom-free for 24 hours before allowing them to return to work. The employee must be symptom-free without any medication that might mask symptoms. For example, the employee should be fever free without taking any medication such as aspirin, Tylenol, or Advil that might artificially reduce the fever. Similarly, employees who had a cough should be cough-free for 24 hours without taking a cough suppressant.

This, however, doesn't take into account whether the person has been tested for COVID-19. In cases where the employee has tested positive for COVID-19, a minimum of 14 days should pass before returning to work. Employers should consult the [CDC's Interim Guidance for Businesses](#) for more detailed information. Employer response may vary according to the type of business and amount of interaction between employees and with the public. For example, healthcare workers have a separate set of [protocols](#).

ADA and FMLA Considerations

For employees with underlying conditions that may put them at greater risk, telework or otherwise isolating the employee may be a reasonable accommodation under the ADA. Similarly, COVID-19 may become a serious health condition under the FMLA even without the recent enhancements. Employers should be lenient in requiring certifications given the current state of medical care.