



# Frequently Asked COVID-19 Questions

This list of Frequently Asked Questions represents questions and concerns voiced by our clients. This information is provided to summarize information available at this time. We encourage you to contact one of our COVID-19 team members for specific guidance you need for your workforce.

**I have an employee with flu-like symptoms. Can I send them home or ask them to seek medical attention?**

**Answer:** Yes, if an employee demonstrates a significant cough or otherwise appears to be ill, you can send the employee home and ask them to seek medical attention. Generally, employers may require medical examinations of employees so long as the medical examination is necessary to determine if the employee poses a direct threat or if an employee's ability to work has been impaired. The Centers For Disease Control (CDC) recommends that employees with acute respiratory illness (i.e., cough, shortness of breath) stay home and until symptom free for 24 hours without the aid of medicine. Employers may also request an employee return to work with a doctor's note that indicates the employee's ability to work without posing a risk to co-workers.

**May I ask employees if they have symptoms of COVID-19 infection?**

**Answer:** The EEOC has not provided clear guidance on this question. What is clear is 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 concerned 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. With 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.

I have an employee that has been exposed to the coronavirus, but they do not show any symptoms. Can I require them to self-quarantine?

**Answer:** Yes, employers may require employees to stay home for a 14-day quarantine period, even if the employee does not present any symptoms.

Question: What if an employee tests positive for the Coronavirus?

**Answer:** A 14-teen day quarantine after employee started exhibiting symptoms is required, unless a doctor certifies that it is safe for the employee to return to work earlier. Notify colleagues of potential exposure and request a visit to the doctor or self-quarantine. NOTE: Maintain confidentiality of employee who tested positive or exhibited COVID-19 symptoms.

Is an employee with COVID-19 protected by the Americans with Disabilities Act?

**Answer:** Generally, no, because in most cases the COVID-19 coronavirus is a transitory condition. However, some plaintiffs could make an argument that the ADA is implicated if the virus substantially limits a major life activity, such as breathing. Moreover, if an employer “regards” an employee with COVID-19 as being disabled, that could trigger ADA coverage, as well.

## Is COVID-19 a recordable illness for purposes of OSHA logs?

**Answer:** OSHA recently published guidance on this issue. OSHA recordkeeping requirements mandate covered employers record certain work-related injuries and illnesses on their OSHA 300 log. You must record instances of workers contracting COVID-19 if the worker contracts the virus while on the job. The illness is not recordable if worker was exposed to the virus while off the clock. You are responsible for recording cases of COVID-19 if:

1. The case is a confirmed case of COVID-19;
2. The case is work-related, as defined by 29 CFR 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work).

## What should an employer do if an employee's household member tests positive for the Coronavirus symptoms?

**Answer:** Employers should be communicating daily with employees and reminding them to self-report to human resources only if the employee or any family member tests positive. Such employees should undergo a 14-day quarantine after exposure, unless a doctor certifies that it is safe for the employee to return work earlier. Employers should notify colleagues of potential exposure and request a visit to a doctor or self-quarantine. Of course, employers should maintain confidentiality of employee who tested positive or exhibited symptoms.

**Can I prohibit an employee from traveling to a non-restricted area on their personal time?**

**Answer:** Employers cannot prevent employees from traveling to affected areas for personal reasons, but employers may deny time off if the denial is based on the destination, business cost of a resulting quarantine, or other legitimate business-driven reasons.

**Can I take an employee's temperature to see if he or she has a fever?**

**Answer:** Yes, as of March 18, 2020, the EEOC has just issued this guidance allowing an employer to take employee temperatures:  
[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)

**Can I furlough employees because of a downturn or anticipated downturn in business due to Coronavirus?**

**Answer:** Yes.

## Can I require employees to get tested for COVID-19?

**Answer:** Generally, this would be considered a medical examination and subject to the rules of the federal Americans with Disabilities Act (ADA) and similar state laws. Under the federal ADA, medical examinations of current employees are prohibited unless they're job-related and a business necessity. This means that the employer must have a reasonable belief based on objective evidence that:

- An employee will be unable to perform the essential functions of their job because of a medical condition; or
- The employee will pose a direct threat because of a medical condition that cannot otherwise be eliminated or reduced by reasonable accommodation.

In the past, the Equal Employment Opportunity Commission has said that this exception could apply if the illness is more severe than seasonal flu or a pandemic has been declared in the United States and becomes widespread as assessed by health authorities. Assessments of whether an employee poses a direct threat in the workplace must be based on objective, factual information. Employers are expected to make their best efforts to obtain public health advice that is appropriate for their location, and to make reasonable assessments of their workplace conditions based on this information.

## Can I lay off or reduce hours of employees because of a downturn or anticipated downturn in business due to Coronavirus?

**Answer:** Yes.

**Can an employee file for unemployment if hours are reduced or they are laid off because of Coronavirus?**

**Answer:** Yes.

**Can an employee refuse to come to work because of fear of infection?**

**Answer:** Employees are only entitled to refuse to work if they believe they are in imminent danger. Section 13(a) of the Occupational Safety and Health Act (OSH Act) defines “imminent danger” to include “any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.” OSHA discusses imminent danger as where there is “threat of death or serious physical harm,” or “a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency.”

The threat must be immediate or imminent, which means that an employee must believe that death or serious physical harm could occur within a short time, for example, before OSHA could investigate the problem. Requiring travel to China or to work with patients in a medical setting without personal protective equipment at this time may rise to this threshold. Most work conditions in the United States, however, do not meet the elements required for an employee to refuse to work. Once again, this guidance is general, and employers must determine when this unusual state exists in your workplace before determining whether it is permissible for employees to refuse to work.

**Can I shut down an office or facility because of a downturn or anticipated downturn in business due to Coronavirus?**

**Answer:** Yes, but remember any type of applicable WARN (Worker Adjustment Retraining Notification Act ) or mini-WARN notice. WARN has exceptions for “natural disaster” or “unforeseen business circumstance” but consult with counsel. Employers are encouraged to give as much notice as practicable.

**Can an employee file for workers compensation if they get Coronavirus at work?**

**Answer:** Yes.





**if you have any questions regarding COVID-19 and your obligations as an employer, please contact someone on our Carr Allison COVID-19 Response Team for guidance.**

**[Carr Allison COVID-19 Response Team](#)**