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Reopening the Workplace: Common Questions and Answers

If you have any questions regarding COVID-19, please do not hesitate to contact our Carr Allison COVID-19 Response Team.

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Carr Allison COVID-19 Response Team

As of 5/6/2020

Since the release of President Trump's Opening Up America Again guidelines, many states and employers are anxious to reopen and resume business operations. Along with that reopening; however come a vast number of questions concerning what is and is not permissible in the employment context. Below are some of the most frequently asked questions, along with some answers, to assist in getting back to business.

Please note that the information below is current through May 1, 2020. Be aware that, as the situation regarding COVID-19 evolves, the guidance issued by the EEOC, CDC and other federal agencies may change. As the direct threat of COVID-19 to public health abates, employers must ensure that they return to pre-pandemic employment practices.

Is an employer within its rights to require COVID-19 testing as a condition of returning to work?

Answer: Though the EEOC has amended the guidance provided in response to this issue, the current EEOC position is yes. The ADA; however, requires that mandatory medical testing of employees be "job related and consistent with business necessity." Due to the nature and risks surrounding COVID-19 and the direct threat to the health of individuals, employers may require that an employee undergo testing to ensure they do not have the virus prior to returning to work. The EEOC cautioned employers to make sure that the tests used are accurate and reliable. Employers must also comply with precautions to help prevent the spread of the disease regardless of any testing requirement that may be implemented.

May employees be required to return to the physical workplace?

Answer: Generally, yes. An unsupported feeling that a workplace is unsafe is not a sufficient reason to refuse to return to work. Employers must; however, ensure that they are complying with CDC, OSHA and other workplace guidelines and recommendations so that employees are able to return to a safe work environment. If an employee is within the category of individuals who are deemed especially vulnerable to COVID-19, however, accommodations may be required, including allowing the continuation of teleworking.

May employers require employees to wear protective equipment?

Answer: Yes. Employees may be required to wear protective equipment such as masks and gloves at the workplace if it is necessary to protect the health of employees. Keep in mind; however, that employers who require that employees wear such equipment should be prepared to provide the same. Further, employers must be mindful of any accommodations that may be required for individuals with disabilities in this regard. If adequate social distancing opportunities are always available to employees, personal protective equipment may not be necessary.

Is it lawful for employers to require that employees respond to health questionnaires related to COVID-19 symptoms and/or exposure upon their return to work?

Answer: Yes. Employers may require that employees respond to questions that could indicate symptoms of or likely exposure to COVID-19.

If an employee feels he or she contracted COVID-19 at work, would it be a compensable claim under workers' compensation?

Answer: Possibly, depending upon the particular state and circumstances.

May an employer insist that employees observe infection control procedures?

Answer: Yes. Employers may require that employees engage in regular hand washing, social distancing, workspace sanitizing and other similar practices. If an employee has a disability and needs an accommodation to comply; however, employers should be responsive and provide such accommodations if at all possible and if such accommodations do not impose an undue hardship on the employer.

If an employee shows symptoms of COVID-19 but has not tested positive, when should he or she be allowed to return to work?

Answer: Generally, employees not working in a healthcare setting who are exhibiting symptoms of COVID-19, such as fever, coughing and shortness of breath should be instructed to stay home for 1) at least 3 days after resolution of their symptoms and 2) at least 10 days since symptoms first appeared. This timeframe continues to evolve as more is learned about COVID-19; however, and the CDC website should be monitored frequently for new information. https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html

Should the identity of an employee who tested positive for COVID-19 be revealed to other employees?

Answer: No, though the fact that an employee tested positive should be disclosed. Individuals who likely came into contact with or shared a workspace with the infected employee should be advised of the CDC Public Health Recommendations for Community-Related Exposure located at https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html.

Once a vaccine becomes available for COVID-19, may an employer require employees to be vaccinated?

Answer: Not likely.

If an employee travels during the COVID-19 crisis, may an employer ask about potential exposure to COVID-19 upon their return even if the employee is not exhibiting symptoms?

Answer: Yes, employers may request information from employees concerning travel to specific locations even if the employee has not shown symptoms of infection. If the area to which the employee traveled has been deemed to be of significantly high risk or to have experienced an outbreak, employers may require that employees wait to return to work for 14 days in accordance with recommendations of the CDC and state/local public health authorities.

If an employee calls in sick, may an employer ask questions related to the sickness?

Answer: An employer is able to ask whether an employee is experiencing symptoms of COVID-19 if the employee calls in sick. Even so, employers must remember to keep all personal and medical information about employees confidential. Generally speaking, an employer is entitled to ask an employee why he or she did not report for work.

If an employee tests positive for COVID-19, when should he or she be allowed to return to work?

Answer: Generally, employees who do not work in a healthcare setting should be instructed to notify the workplace and stay home for at least 10 days if they test positive for COVID-19. Please note; however, that this timeframe continues to evolve as more is learned about COVID-19 and the CDC website should be monitored frequently for new information.

https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html

May employers refuse to allow employees experiencing symptoms of COVID-19 to return to or remain at the workplace?

Answer: Yes. Employers may require employees with symptoms to leave the workplace.

If a member of an employee's household is exhibiting symptoms or tests positive for COVID-19, when should the employee be allowed to return to work?

Answer: The employee should be asked to stay home and self-monitor for symptoms for 14 days. "Note that recommendations for discontinuing isolation in persons known to be infected with COVID-19 could, in some circumstances, appear to conflict with recommendations on when to discontinue quarantine for persons known to have been exposed to COVID-19. CDC recommends 14 days of quarantine after exposure based on the time it takes to develop illness if infected. Thus, it is possible that a person known to be infected could leave isolation earlier than a person who is quarantined because of the possibility they are infected."
https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html

May an employer take employees' temperatures upon arrival at the workplace?

Answer: Yes. Depending upon the nature of the employee's position and work environment, this may occur at the time when the employee is recalled or at the beginning of each work shift. Several issues must be considered; however, if a decision is made to require employees to submit to a temperature screening. Such considerations include whether the employee should be paid while waiting for and having his or her temperature taken, who would be responsible for taking temperatures, would the environment in which the temperature screenings take place allow for privacy, etc. Further, employers should keep in mind that not all individuals who are positive for COVID-19 have a fever. Any information obtained about an employee's temperature or other personal health information must always be kept confidential.

So many questions have arisen lately concerning the workplace and COVID-19. The answers to those questions are evolving every day. The above general guidance may provide quick, general answers; however, many situations may involve additional laws and regulations that have applicability. Before taking any employment-related action or developing any policies related to COVID-19, we suggest that you consult with legal counsel. We will be happy to guide you through to the new normal that is sure to exist post-coronavirus.

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