

COVID-19 and How Employers Can Respond

The Centers For Disease Control (CDC) has provided recommendations for responding to the coronavirus disease 2019 (COVID-19) — which the World Health Organization has now classified as a pandemic. In addition to the CDC guidelines, employers should also consider guidance from the Equal Employment Opportunity Commission (EEOC) and the Occupational Safety and Health Administration (OSHA) with respect to the Americans with Disabilities Act (ADA), workplace safety and guidelines concerning any pandemic. Below are some quick notes as to what employers can and cannot do with respect to OSHA, the EEOC and CDC's recommendations.

EMPLOYERS MAY:

- ✓ **Reinforce sick leave and/or telecommuting policies to all employees**
The CDC specifically recommends employees who have symptoms of acute respiratory illness or fever stay home and not come to work until they are free of all symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants). Likewise, employers may ask employees displaying symptoms to leave the workplace.
- ✓ **Adopt infection control practices**
Requiring infection control practices, such as regular hand washing, coughing and sneezing etiquette and proper tissue usage/ disposal, does not implicate the ADA.
- ✓ **Ask employees who recently traveled to/from an affected area to work remotely or take leave**
Generally, employers should not prohibit employees with an illness or other mental or physical condition from working unless the employee poses a direct threat to himself or coworkers. The employee must pose a significant health or safety concern that can't be eliminated by reasonable accommodation. Moreover, this must be based on more than subjective belief. However, the EEOC also acknowledges that a pandemic rises to the level of direct threat, and the assessment of the CDC or other public health authorities would provide objective evidence needed for a disability-related inquiry or medical examination. Additionally, if the CDC recommends people who visit certain areas stay home for several days until it is clear they do not have pandemic symptoms, then employers are permitted to ask whether employees are returning from those areas. When possible, we recommend offering paid sick leave.
- ✓ **Ask employee about absence from work if the employer suspects it is for a medical reason**
Asking why an individual did not report to work is not a disability-related inquiry. An employer is always entitled to know why an employee has not reported for work. However, because of the present burden on healthcare providers, OSHA recently recommended employers not require a doctor's note from employees who missed work due to respiratory symptoms as doctor's offices may not be equipped to handle the volume of these requests.
- ✓ **Maintain confidentiality**
All employees' health and medical documentation must remain confidential and kept in a file separate from their regular personnel file.

EMPLOYERS MAY NOT:

- ✗ **Take employees' temperatures**
- ✗ **Ask employees who do not have symptoms whether they have a medical condition that could make them especially vulnerable to COVID-19**
- ✗ **Prohibit healthy employees from wearing masks** (but you may remind them of more effective preventive measures)

If you wish to further discuss how employers should respond to COVID-19 or have any questions, please contact Swift Currie attorneys:

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