

Coronavirus:

Protecting your employees
& business



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Coronavirus disease 2019 (COVID-19) is a respiratory illness that can spread from person to person. Patients with the condition have had mild to severe respiratory illness with symptoms of fever, cough, and shortness of breath. Employers and employees may have questions about what they can do to help manage the situation and prevent the spread of the virus in the workplace. Here are some guidelines that can help:

#1: Monitor guidance from health officials

Besides the [Centers for Disease Control and Prevention](#) (CDC), the [U.S. Occupational Safety and Health Administration](#) and the [World Health Organization](#) have created dedicated webpages with information on COVID-19. In addition, state and local health officials are developing guidelines and resources on the illness. Check your state Department of Health for additional information.

#2: Develop and communicate workplace policies

Develop hygiene policies aimed at keeping the workplace clean and reducing the spread of communicable disease. Policies should be consistent with public health recommendations and existing laws. Provide employees with information on how viruses are transmitted and help employees practice healthy habits by providing tissues, no-touch trash cans, hand soap and sanitizer, and disposable towels. Routinely clean all frequently touched surfaces, such as workstations, countertops, and doorknobs. The situation is evolving quickly, so review and update policies as more information becomes available.

#3: Encourage employees to stay home if they're sick

Encourage employees to stay home from work if they're sick. The CDC recommends that individuals wait at least 24 hours after they're free of a fever or show signs of a fever or any other symptoms (without the use of fever-reducing or other symptom-altering medicines) before returning to work. Avoid pressuring ill workers to return to work too soon. Inform employees of the company's paid time off or sick leave policies and associated call-in procedures in the event of an absence due to illness.

#4: Understand leave requirements

The Family and Medical Leave Act (FMLA) and similar state laws require employers to provide unpaid leave to employees with serious health conditions. The FMLA applies to employers with 50 or more employees, but some states have similar laws that cover smaller employers. Several states also have paid family and medical leave programs. Additionally, a large number of state and local jurisdictions require employers to provide paid sick leave to employees. Employers should confirm that their leave policies and practices comply with all applicable laws.

Even in the absence of a leave requirement, employers should consider maintaining flexible policies that encourage employees to stay home when they're sick and permit employees to stay home to care for a sick family member.

#5: Offer flexible work arrangements

Flexible work arrangements, such as telecommuting, flexible schedules, and staggered schedules can help prevent the spread of the illness by allowing employees to work without exposing themselves or others to the virus. Greater use of teleconferences and e-mail versus face-to-face meetings are additional social distancing strategies that can help prevent the spread of illness.

#6: Send symptomatic workers home

If an employee shows symptoms of acute respiratory illness, separate them from other employees and send them home immediately. Remind sick employees to cover their noses and mouths with a tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available).

Note: If a worker's condition were to qualify as a disability under the Americans with Disabilities Act (ADA) or similar state laws, consider reasonable accommodations and evaluate whether the illness is severe enough to pose a direct threat to others in the workplace.

#7: Consider business-travel restrictions

Currently, the CDC is recommending that travelers avoid all nonessential travel to China, Iran, Italy, and South Korea. The agency also says that older adults and those with chronic medical conditions should consider postponing nonessential travel to Japan.

Some employers have enacted business-travel restrictions that exceed the CDC's recommendations, such as prohibiting all business travel to other countries. Review the CDC's [travel guidance](#) and develop business-travel rules that make sense for your company. Monitor the situation closely and adjust your rules as circumstances change.

#8: Address sick family members

Ask employees to notify you if they have a family member who has COVID-19 and direct them to the CDC's guidance for [how to conduct a risk assessment](#) of their potential exposure.

#9: Obtain information cautiously

Ask employees who call in sick if they're experiencing symptoms, such as fever, cough, or shortness of breath. Avoid questions that are likely to elicit information about a disability, which could result in the employee revealing that they have an condition that is covered under the ADA.

#10: Maintain privacy

Treat all information about an employee's illness as a confidential medical record and keep the information separate from their personnel file. If you wish to inform employees about a communicable disease in the workplace, do not reveal who has the illness.

#11: Develop a business continuity plan

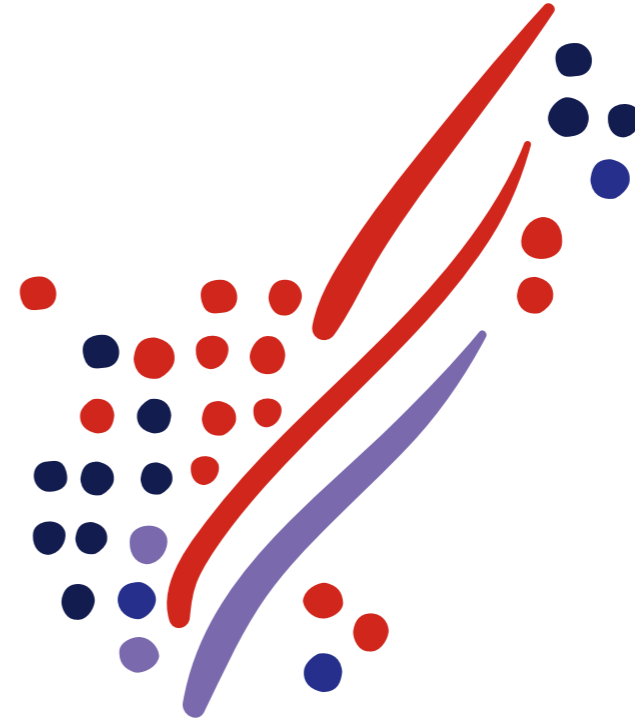
Depending on the size of your business and the number of ill workers, you may experience impacts to your day-to-day operations and your bottom line. Consider a business continuity plan that outlines essential business functions and essential jobs or roles required to maintain business operations. In addition, consider cross-training employees so they can fill in for co-workers who are absent. Train employees on your plan so they're prepared to execute it if needed.

#12: Protect employees from discrimination and harassment

Federal, state, and local laws prohibit employers from discriminating against or harassing employees based on certain protected characteristics. Employees whose families are, or are perceived to be, from places where an outbreak has occurred may face discrimination and/or harassment as a result. Take all complaints seriously and launch a prompt, thorough, and impartial investigation into the complaint. If an investigation reveals that discrimination or harassment occurred, take immediate and appropriate corrective action. Consider disciplinary measures that address the severity of the offense and administer your disciplinary policy on a consistent basis.

Conclusion:

Employers should monitor guidance from health officials, develop and update policies and practices that will help prevent the spread of COVID-19, comply with applicable laws, and consult legal counsel as needed.



Common employer questions & answers

With more and more confirmed cases of coronavirus (COVID-19) in the United States, employers have been left wondering how to handle the situation should it impact their workplace. Below we address some of your frequently asked questions. Keep in mind that the situation is evolving quickly. Before acting, always check on the most up-to-date information and guidance from public health officials, consulting legal counsel as necessary.

Q: Where can I find information about COVID-19?

A: The [Centers for Disease Control and Prevention](#) (CDC), the U.S. Occupational Safety and Health Administration and the [World Health Organization](#) have created dedicated webpages with information on COVID-19.

In addition, state and local health officials are developing guidelines and resources on the illness. Check your state and local Department of Health for additional information.

Q: What is the risk of contracting COVID-19 in the workplace?

A: According to health officials, the risk of contracting COVID-19 in most jobs generally remains low in the United States. The CDC regularly conducts risk assessments, and as of March 6, 2020:

- For most of the American public, the immediate health risk is considered low.
- People in communities where ongoing community spread has been reported are at elevated risk of exposure.
- Healthcare workers caring for patients with COVID-19 and close contacts of persons with COVID-19 are at elevated risk of exposure.
- Travelers returning from affected [international locations](#) (China, Iran, Italy, Japan, and South Korea,) where community spread is occurring also are at elevated risk of exposure.

Q: What can I do to help prevent the spread of COVID-19 in my workplace?

A: Health officials recommend reminding employees of the importance of:

- Washing hands often with soap and warm water for at least 20 seconds.
- Avoiding touching your eyes, nose, and mouth.
- Cleaning things that are frequently touched (like doorknobs and countertops) with household cleaning spray or wipes.
- Covering coughs and sneezes with a tissue or the inside of the elbow.

- Staying home when feeling sick. You can help encourage employees to stay home when they're sick by reminding them of your paid (or unpaid) leave program. Consider reviewing and revising your sick policy and procedures for flexibility. At a minimum, ensure that your policy is consistent with current public health recommendations and existing federal, state, and local laws. Be clear on any notice requirements for absences and enforce rules consistently.

Note: Depending on the circumstances, employers may be required to provide job-protected time off to employees under federal, state, and/or local disability and/or leave laws.

Employers can help employees practice healthy habits by providing tissues, no-touch trash cans, hand soap and sanitizer, and disposable towels. Routinely clean all frequently touched surfaces, such as workstations, countertops, and doorknobs.

Q: If I want to prevent abuse of our paid time off policies during a potential outbreak, can I require employees to provide documentation that their absence was for a covered reason?

A: Some state and local sick leave laws restrict employers from asking for documentation. For example, several laws require that an employee be absent for more than three consecutive days before an employer can ask for documentation. In its interim guidance, the CDC has advised that employers should not require a healthcare provider's note for employees

who are sick with acute respiratory illness to validate their illness or to return to work. This is because healthcare provider offices and medical facilities may be extremely busy and unable to provide documentation in a timely fashion. Any information that you do collect must be kept confidential and separate from the employee's personnel file.

Q: Can I ask my employees to go home if they are showing symptoms of COVID-19?

A: Individuals with COVID-19 have had mild to severe respiratory illness with symptoms of fever, cough, and shortness of breath. If one of your employees shows these symptoms, you can ask them to go home and direct them to speak with their doctor.

Q: Can I take an employee's temperature? Can I require employees to get tested for COVID-19?

A: Generally, both 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. As of March 8, 2020, a pandemic hasn't been declared in the United States.

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.

Q: Can I ask employees to notify me if they've come in contact with someone who has COVID-19?

A: Employers may ask employees to notify them if they have been in contact with someone who has COVID-19. If an employee reports contact with someone who has COVID-19, direct the employee to the CDC's guidance for [how to conduct a risk assessment](#) of their potential exposure to assess whether they are low, medium, or high-risk.

Q: My employee was traveling in an area currently impacted by the virus.

If they are asymptomatic, can I require them to undergo a quarantine prior to returning to work?

A: Yes. Some employers have asked workers who are returning from any country on the CDC's restricted-travel list to self-quarantine for 14 days and work from home. If working remotely isn't an option for an employee, consider consulting legal counsel to discuss your rights and obligations before asking the worker to self-quarantine.

Q: Can I prevent asymptomatic employees from entering the workplace if they, or their household member, have traveled to designated WHO or CDC affected regions?

A: Yes, as long as employers act consistently based on travel activities and do not say or do anything to violate the ADA or other federal, state or local nondiscrimination laws.

Q: Can I prohibit my employees from engaging in personal travel abroad?

A: Some states prohibit employers from taking adverse action against an employee for engaging in lawful off-duty conduct, such as travelling to another country. The time off may also be protected under federal, state, and local laws entitling employees to job-protected leave.

For instance, an employee taking time off to take care of a family member with a serious health condition may be protected under the federal Family and Medical Leave Act, similar state laws, and/or state and local paid sick leave laws. Employers can advise employees to take precautions, including:

- Check the [CDC's Traveler's Health Notices](#) for the latest guidance and recommendations for each country to which they will travel.
- Remain alert for fever, cough, or difficulty breathing and avoid the workplace if they do develop any of these symptoms.

If an employee has traveled or intends to travel, absent a claim that the employee has a recognized privacy interest in their travel, you may ask about their travel plans and take steps to reduce workplace exposure.

Q: Can I ask employees about geographic areas where they have traveled or intend to travel?

A: Yes, absent a claim that an employee has a recognized privacy interest in their travel activities. Employers should take steps to reduce any reasonable expectation of privacy that employees might have in those activities.

Q: Can I stop my employees from going home because they fear they will become exposed while at work?

A: Employees who refuse to work may have protections from adverse action. For example, under the Occupational Safety and Health Act, employees may have the right to refuse to work if **all** of the following conditions are met:

- Where possible, they have asked the employer to eliminate the danger, and the employer failed to do so;
- They genuinely believe that an imminent danger exists;
- A reasonable person would agree that there is a real danger of death or serious injury; and
- There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

Section 7 of the National Labor Relations Act (NLRA), which grants employees the right to act together to improve wages and working conditions, may also come into play in this situation.

If employees express apprehension about working and the risk of contracting the illness remains low, employers can try to reassure them by discussing the measures the company has taken to protect employees, referring to information from public health officials about the risks of workplace exposure, and suggesting ways they can help further reduce the possibility of exposure. You may also want to consider offering the option of working from home if possible, a flexible schedule so they can limit contact with others, and/or paid or unpaid leave.

Note: If an employee has an underlying condition that would qualify as a disability, they may be entitled to a reasonable accommodation under the ADA and/or similar state laws. Paid or unpaid leave may be considered a reasonable accommodation.

Q: What should I do if an employee informs me they have COVID-19? Should I tell co-workers?

A: If an employee is confirmed to have COVID-19, employers should inform other employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality (that is, don't reveal who has the illness). Employers should treat all information about an employee's illness as a confidential medical record and keep it separate from the employee's personnel file. Employers should also immediately contact local health officials for further guidance.

Q: Do I have to allow employees to work from home?

A: In general, employers aren't required to allow employees to work from home. However, telecommuting can help prevent the spread of the illness by allowing employees to work without exposing themselves or others to the virus. Therefore, you should consider telecommuting as an option for jobs that can be performed remotely.

Note: Telecommuting may be considered a reasonable accommodation if a worker's condition qualifies as a disability under the ADA and/or similar state laws.

Q: Should employees wear a face mask to work?

A: OSHA regulations for personal protective equipment (PPE) and respiratory protection require employers to assess the hazards to which their workers may be exposed when determining whether to require PPE. In this context, consider whether your workers may encounter someone infected with COVID-19 in the course of their job duties, or whether they may come into contact with worksites or materials (such as, laboratory samples, waste) contaminated with the virus.

Keep in mind that there are key differences between respirators and the facemasks you see people often wear on the street during outbreaks. A respirator reduces exposure to airborne particles, is tight-fitting, and filters out at least 95 percent of particles in the air. Respirators, including those intended for use in healthcare settings, are certified by the CDC/NIOSH. By contrast, most facemasks do not effectively filter small particles from the air and don't prevent leakage around the edge of the mask, so they can't be relied upon to protect workers against airborne infectious agents. However, the CDC does recommend that individuals with a confirmed or suspected case of COVID-19 wear a facemask until they are isolated at home or in a hospital.

Q: What happens if schools close and employees need time off?

A: Among the states and local jurisdictions that require employers to provide paid sick leave, many cover absences related to school closures that are ordered by health officials. Check your state and local laws for details. In the absence of a specific requirement, employers should consider offering paid and/or unpaid leave to these employees.

Q: If my business is forced to close, do I have to pay non-exempt employees?

A: Non-exempt employees (those entitled to minimum wage and overtime) are paid only for “hours worked.” Therefore, if non-exempt employees miss an entire day’s work because you’re closed and you didn’t require them to report to work, you’re generally under no obligation to pay them, unless you’ve promised otherwise. You can give employees the option of using any accrued paid time off for the time missed.

Q: What about exempt employees? Would I have to pay them their full salary if we close?

A: Exempt employees must generally receive their full salary in any workweek in which they perform work, regardless of the number of hours worked. If your company closes for less than a full workweek due to the virus, you must generally pay an exempt employee their full salary, as long as the employee worked any part of the workweek.

Q: What if my company is forced to close early because of the virus. Do I have to pay non-exempt employees for the time they missed that day?

A: If the company closes early, federal law doesn’t require you to pay non-exempt employees for the missed time, unless you promised otherwise. However, you must pay these employees for any time they actually worked and for the time they stayed at work while you were making a decision to close. Note that some state laws require employers to pay employees for a minimum number of hours when they report to work but are sent home before the end of their scheduled shift. Check your applicable law for pay requirements when employees are required to report to work but are sent home early.

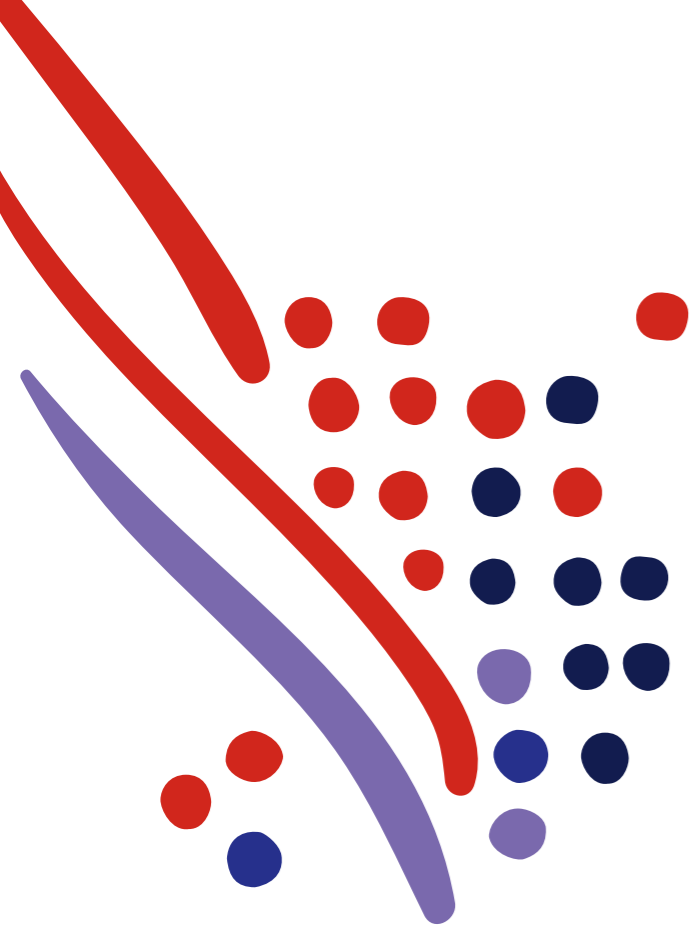
Q: What if an employee is on a quarantine and cannot telecommute? Do I have to pay them during the quarantine?

A: Employers should check applicable policies, collective bargaining agreements, and state and local paid leave laws to determine if pay is required. For example, federal or state wage and hour laws may require exempt employees to be paid their regular salary if they are directed not to report to work, unless it is in increments of a full workweek. Some state or local laws may impose additional pay obligations for certain occupations, especially if employers provide little or no advance notice that employees are not to report to work as scheduled.

State and local paid leave laws may also require pay. Even in the absence of a requirement, some employers are electing to pay employees who are placed in quarantine and cannot telecommute.

Conclusion:

Closely monitor guidance from health officials and develop and update sick leave and remote work policies in order to help prevent the spread of COVID-19.



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