

## COVID-19 FREQUENTLY ASKED QUESTIONS

### OVERVIEW

#### **Background**

COVID-19, caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), originated in Wuhan, China in late 2019. The virus has spread globally and has made its way into the United States. The World Health Organization (WHO) declared the outbreak of COVID-19 a pandemic, which is defined as the worldwide spread of a new disease.

#### **Symptoms**

COVID-19 symptoms manifest as a mild to severe respiratory illness with fever, cough, and difficulty breathing. Symptoms may appear in as few as two days or as many as 14 days after exposure.

#### **Transmission**

COVID-19 spreads from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. These droplets can land on surfaces or objects and spread to others through contact.

### STEPS TO REDUCE RISKS IN THE WORKPLACE

#### **What can employees do to reduce risk of infection?**

Employers should repeatedly and aggressively encourage employees and others to take the same steps they should be taking to avoid the seasonal flu. The best way to prevent infection is to avoid exposure. The messages that should be given to employees are:

- Wash your hands often with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Avoid close contact with others, especially those who are sick.
- Refrain from shaking hands.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.
- Stay home when you are sick.

#### **What should an employer do to reduce risk?**

In order to reduce risk, an employer should:

- Ensure that employees have ample facilities to wash their hands with soap.
- Accelerate cleaning/custodial schedules.
- Use teleconference or other remote work tools in lieu of personal meetings.
- Consider staggering employee starting and departing times, along with meal and Break periods, to minimize overcrowding in common areas.
- Have a point of contact for employees for concerns related to health and safety.
- Follow updates from the CDC and WHO regarding additional precautions.

## **REMOTE WORK PLANS**

### **Should employers institute remote work policies?**

Whether or not a company implements a remote work policy is dependent on the circumstances within the organization and the area of the country where workers live. Employers should consider whether it is worth introducing a new system without the time to test and develop remote work capabilities. If a company has developed these protocols, however, this might be a good opportunity to make use of them. Employers should (as always) try to make educated, rational decisions and not succumb to emotion or fear.

### **What infrastructure is necessary for a remote work plan?**

Employers should identify critical roles in business operations and determine whether those tasks can be completed remotely. Companies can then assess capabilities by asking the following questions:

- Does our organization have support in place to deal with inevitable IT issues?
- Do we have sufficient security and privacy protocols in place?
- Does our company have a reliable method to track hours worked, rest breaks, and meal periods?
- How will we deal with necessary business expenses, such as internet, phones, and use of equipment (computers, printers, etc.)?

### **What can our company do prepare for a possible remote work scenario?**

As soon as possible, employers should:

- Take inventory of the types of equipment workers will need to get their jobs done, such as laptops, desktop computers, monitors, phones, printers, chargers, office supplies, or any other essential materials.
- Digitize any relevant physical materials to make remote work easier.

- Encourage employees to prepare for a work from home scenario. This may include the development of a “ready bag” that employees take home with them each day that allows them to work from home at a moment’s notice.

### **What should be included in a remote work policy?**

Remote work policies should set out expectations for workers during their temporary remote work routines. Employers should convey to employees that they are expected to help maintain normal business operations to the greatest extent possible. The following questions should be considered:

- How strict is the policy? Are workers encouraged to work at home or are they prohibited from coming to the office?
- Will there be exemptions for “essential” personnel that need to be at a certain physical location?
- Will employees need to be available at all times during working hours or will remote meetings and appointments be scheduled ahead of time?
- Will remote meetings take place online, on the phone, or via video?
- Will employees be prohibited from meeting with each other? Will meeting size be restricted?
- Will employees be prohibited from meeting with third parties while doing company business?
- Is there sufficient security infrastructure in place (encryption, password-protection etc.) to prevent data breaches?
- Can workers perform work on their own devices?

Employers should include an anticipated end date in a remote work announcement and provide regular weekly updates.

### **What are some things to keep in mind to ensure that remote work time is productive?**

Employers should consider the following:

- Using single communications platform such as email, instant messaging, Slack, Skype, Zoom Conferencing, or another designated tool.
- Looking at the big picture and tracking overall productivity without detrimentally micromanaging employees when they are at home.
- Keeping an eye out for employee burnout and overstressed workers.
- Scheduling virtual meetings.
- Frequently connecting with workers virtually by phone or text.

## **EMPLOYEE CONCERNS**

### **Can we ask an employee to stay home or leave work if they exhibit symptoms of COVID-19 or the flu?**

Yes, employers are permitted to ask an employee to leave work to seek medical attention and not return until symptom-free. The CDC recommends that employees exhibiting flu-like symptoms should leave the workplace. Additionally, during the H1N1 pandemic, the Equal Employment Opportunity Commission (EEOC) stated that advising workers to go home is not disability-related.

### **Must an employer continue to pay employees who are not working?**

Under the Fair Labor Standards Act (FLSA), for the most part the answer is “no.” FLSA minimum-wage and overtime requirements attach to hours worked in a workweek, so employees who are not working are typically not entitled to the wages FLSA requires. However, there are exempt employees. Below are explanations of both non-exempt and exempt employees:

- Non-exempt employees. Non-exempt employees are typically non-salaried employees (i.e. hourly employees) who, when working more than 40 hours per week are entitled to overtime. If a non-exempt employee reports to work and is then sent home before working a full shift, the best practice is to pay them at least two hours but no more than four hours of reporting time pay. If an employee is required to stay at home and as a result cannot do their work, and employer can require that employee to use accrued sick pay. Employers may consider a reduced hourly rate or continue paying a normal hourly rate for a certain time period to encourage employees to remain at home. If an employee is able and permitted to work from home, the employee must be compensated for all hours worked.
- Exempt employees: Salaried or high-earning hourly employees (such as computer programmers), who are ready and willing to work but asked to stay home should be paid their regular salaries.

### **If an employee is diagnosed with COVID-19, should the employer inform everyone at the same workplace?**

If an employee is confirmed to have COVID-19, employers should advise other employees or other persons who may have had possible contact with that employee. However, **EMPLOYERS MAY NOT DISCLOSE THE NAME OF THE AFFECTED EMPLOYEE AND MUST TAKE ALL POSSIBLE STEPS TO MAINTAIN THE CONFIDENTIALITY OF THE AFFECTED EMPLOYEE.**

### **Can an employee be required to have their temperatures taken at work or as a pre-condition to work?**

The Americans with Disabilities Act (ADA) generally prohibits employers from making medical inquiries and requiring medical exams (including temperature checks). However, a temperature check may be allowed if the employer can show that:

- the inquiry or exam is job-related and consistent with a business necessity, or
- the employer has a reasonable belief that the employee poses a direct threat to the health or safety of that individual or others that cannot otherwise be eliminated or reduced by a reasonable accommodation.

### **What if an employee exhibits flu-like symptoms but refuses to leave the workplace?**

Employers should first take a collaborative approach. Explain to the employee the reason why their departure is necessary is to maintain the health and safety of the workplace. Explain to that employee the benefits (such as paid sick leave, use of accrued vacation time, etc.) that may be available to them. Last resort measures include contacting local law enforcement or termination.

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

Employees are only entitled to refuse work if they believe they are in imminent danger. Section 13 of the Occupational Safety and Health Act (OSHA) 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.” Most work conditions in the United States do not meet the elements required for an employee to refuse to work.

### **An employee alleges that they contracted COVID-19 while at work. Will this result in a compensable workers’ compensation claim?**

It depends. If the employee is a health care worker or first responder, the answer is likely yes. For other categories of employees, compensable claims could be possible but on a case-by-case basis. The key point will be whether the employee contracted the virus at work and whether the contraction of the disease was “peculiar” to their employment. Even if the employer takes all the right steps to protect the employees from exposure, a compensable claim may be determined where the employee can show that they contracted the virus after an exposure, the exposure was peculiar to the work, and there are no alternative means of exposure demonstrated.

### **Can a company make changes to unionized employees’ work schedules or duties in response to the COVID-19 pandemic?**

The National Labor Relations Act (NLRA) imposes on employers the duty to bargain in good faith over mandatory subjects of bargaining such as wages, hours, and terms and conditions of employment. Generally, employers who make unilateral changes to these facets of employment may be subject to unfair labor practice charges that would apply even in emergency situations such as this one, unless the collective bargaining agreement provides otherwise.

Employers with unionized labor should consult the collective bargaining agreement to determine their rights and obligations.

**Does a *force majeure* clause in a contract cover the COVID-19 pandemic?**

Possibly. A force majeure clause relieves parties from performing contractual obligations when certain circumstances beyond their control arise, making performance inadvisable, impracticable, illegal, or impossible. Whether the outbreak triggers the force majeure clause—and the effect of that clause on the provisions of the contract—will vary significantly with each employer.

**LEAVE**

**What leave must employers provide employees diagnosed with COVID-19?**

Any short or long-term sick leave taken by an employee with COVID-19 should be addressed through existing written employment guidelines in conformance with Federal and State law. Additionally, Federal and State law require unpaid leave for employees who are unable to work due to serious illnesses or serious illnesses in their family.

**Can employers require an employee to provide a doctor's note if the employee stays home due to symptoms consistent with COVID-19?**

Employers may not condition initial paid sick leave on an employee providing medical certification. Additionally, the CDC recommends not requiring a doctor's note because health care providers are overwhelmed.

**What leave must be granted to an employee whose family member has COVID-19?**

If it is short term leave, it may be covered under an existing sick leave policy. As COVID-19 is likely to be considered a serious illness, an extended leave would likely be covered by the Family and Medical Leave Act (FMLA). An employer may also require the employee have a quarantine period before returning to work and require that such employees represent that they have no symptoms before returning to work after caring for a family member. The CDC website should be consulted for best practices.

**What are the applications of FMLA?**

FMLA applies to any employer with 50 or more employees. At the Federal level, if an employee is entitled to leave, it is unpaid leave and extends for a period of 12 work weeks during any 12-month period. FMLA leave is only required for employees that have worked for the employer for at least 12 months. If applicable, the employee must be provided with full benefits during leave, including healthcare insurance. If an employee is otherwise required to pay for a portion of their health insurance premiums as an active worker, this obligation survives during

leave. Employers should send written notice to any employees on leave reminding them of this obligation.

## **HEALTHCARE AND MEDICAL INFORMATION**

### **Does the COVID-19 emergency trump HIPAA privacy rules?**

No. The government sent a reminder to all employers that they must still comply with the protections contained in the Health Insurance Portability and Accountability Act (HIPAA) during the COVID-19 outbreak. The Office for Civil Rights of the U.S. Department of Health and Human Services (HHS) issued a reminder after the WHO declared a global health emergency.

### **What are our obligations under the HIPAA if we are contacted by officials asking for emergency personal health information about one of our employees?**

The privacy restrictions mandated by HIPAA only apply to “covered entities” such as medical providers or employer-sponsored group health plans, and then only in connection with individually identifiable health information. Employers are not covered entities, so if you have medical information in your employment records, it is not subject to HIPAA restrictions. Nevertheless, disclosures should only be made to authorized personnel that have been properly identified, and only after legal consultation.

### **How should employers treat medical information?**

All medical information should be treated as confidential and afforded the same protections as those granted by HIPAA and your group health plan. In certain circumstances, plan information can be shared with government officials, health care providers, or officially chartered organizations (such as the Red Cross), but legal consultation is recommended before releasing any information.

### **If employees are no longer working, are they still entitled to group health plan coverage?**

Not necessarily. Employers need to check the group health plan document (or certificate of coverage if the plan is fully insured) to determine how long employees who are not actively working may remain covered by your group health plan. Once this period expires, active employee coverage must be terminated (unless the insurance carrier or self-funded plan sponsor otherwise agrees to temporarily waive eligibility provisions) and a COBRA notice must be sent.

### **What happens to group health plan coverage if employees are not working and unable to pay their share of the premiums?**

In the normal course of events, group health plan coverage will cease when an employee’s share of premiums is not timely paid. However, the following actions may allow coverage to continue:



- The insurance carrier providing healthcare may voluntarily continue the coverage while the disaster is sorted out and until an employer reopens its doors.
- An employer may make an arrangement with the insurance carrier providing health coverage to pay the employees' share of premiums to keep coverage in place (at least temporarily).

### **Is COVID-19 testing covered by an employer's group health plan?**

It depends. Employers should consult with their insurers and take notice of any legislation that may be passed regarding testing.

### **What existing group health benefits may be useful for our employees?**

Employers should consider enhanced promotion of current benefit offerings to ensure employees take advantage of existing healthcare services offered such as:

- Telemedicine services
- Employee assistance programs
- Wellness program services
- Disease management programs
- Free or discounted preventative care

## **TRAVEL**

### **What current travel restrictions are in place?**

President Trump has issued a number of Presidential Proclamations limiting the entry of foreign nationals who were physically present in the following countries during the 14-day period before their attempted entry into the United States: China, Iran, Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, and Ireland. The travel restriction on China does not apply to Hong Kong, Macau, or Taiwan.

### **Who is exempt from travel restrictions?**

The following individuals are not subject to the travel ban on Europe:

- U.S. Citizens;
- lawful permanent residents (green card holders);
- spouses and children (unmarried under 21) of a U.S. citizen or lawful permanent resident;
- parents and minor siblings (unmarried under 21) of a U.S. citizen or lawful permanent resident who is unmarried and under the age of 21;



- people traveling at the invitation of the U.S. government to contain or mitigate the virus;
- people traveling on crew member visas or diplomatic or International Organization visas;
- certain foreign government officials and their family members;
- members of the U.S. Armed Forces and their families;
- United Nations personnel;
- people whose entry would not pose a significant risk of spreading the virus, as determined by the CDC; and
- people whose entry would further important U.S. law enforcement objectives or would be in the national interest.

**Are there conditions for the return of those who are exempt from the travel restrictions?**

Yes. All U.S. citizens, legal permanent residents, and their immediate families who are returning from a restricted country must self-quarantine in their homes for 14 days after their arrival.

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

Generally, employers cannot prohibit otherwise legal activities, such as travel abroad by an employee. However, employers should educate their employees before they engage in travel to risky environments to try and work out a solution. Those employees should be monitored upon returning from such travel.

**What should an employer do if an employee has recently traveled to an affected area or otherwise may have been exposed to COVID-19?**

During a pandemic, an employer does not have to wait until an employee develops symptoms to ask questions about exposure to a pandemic influenza during recent travel. If the CDC or state or local health officials recommend that people who visit specified locations remain at home after traveling, an employer may ask an employee what locations they have traveled to, even if the travel was for personal reasons.

**Can employees refuse to travel as part of their job duties?**

Employees who object on behalf of others or act in groups could be covered by the NLRA protection of concerted protected activity. However, OSHA guidelines state that employees can only refuse to work when a realistic threat is present. If employees refuse to travel for business to any other country for fear of catching COVID-19, try to work out an amicable solution and discuss the CDC, State Department, and Department of Homeland Security (DHS) advisories. Some employees may be at particularly more risk than others, so employers should consult CDC guidelines.