

Coronavirus (COVID-19) and the Workplace: Frequently Asked Questions

by Erin McAdams Franzblau

A FREEBORN & PETERS LLP CLIENT ALERT

As the 2019 Novel Coronavirus (COVID-19) continues to spread, it has generated a variety of unique concerns in the workplace. For example, employers are facing challenging questions regarding how to handle safety and health, accommodation requests, remote working, travel, and other employment issues. The following FAQ address some of the common issues employers should consider in the coming weeks. The virus' impact on workplaces is rapidly evolving, so refer back to [Freeborn's COVID-19 webpage](#) where we will respond to future developments in this and other areas of the law.



As an employer, do I have a legal obligation to take steps to protect employees from COVID-19?

Generally, yes. The OSH Act's general duty clause requires that employers furnish to employees a place of employment "free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." But what does this mean? [OSHA's recent guidance](#) is instructive. Some take-aways from OSHA's guidance include the following:

- Develop an infectious disease preparedness and response plan to help guide protective actions against COVID-19.
- Implement and encourage basic infection prevention measures, including (1) frequent hand washing; (2) encouraging workers to stay home if they are sick; (3) encouraging respiratory etiquette, including covering coughs and sneezes; (4) exploring whether flexible worksites or work hours are feasible; (5) discouraging workers from using other workers' phones, desk, offices, and equipment; and (6) maintaining regular housekeeping practices.
- Develop policies and procedures for prompt identification and isolation of ill employees.
 - Ensure employees are not in the workplace after they are exposed to COVID-19, and ask them to work from home if feasible.
- Develop, implement, and communicate about workplace flexibilities and protections.
 - Review your sick leave policies for compliance with state and local law, and communicate your policies to employees.
 - Encourage employees to stay home when they are sick, and maintain flexible policies that permit employees to stay home when they or a family member are sick.

Should I allow employees to return to work after experiencing symptoms of COVID-19?

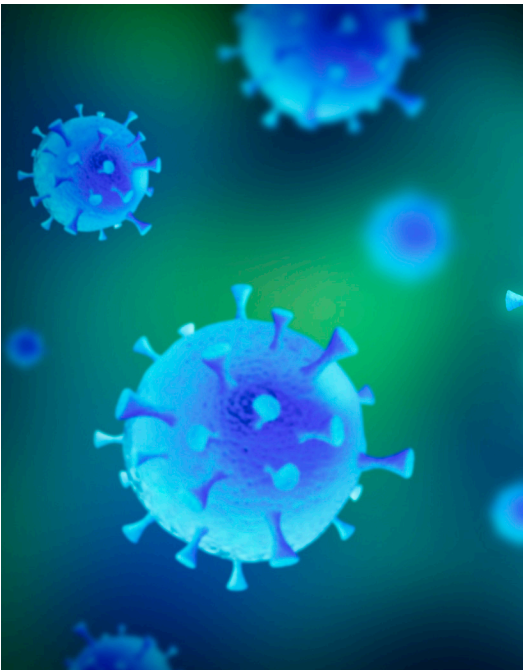
Upon recent guidance, after an employee experiencing symptoms of COVID-19 has self-quarantined for 14 days and ceases exhibiting symptoms, he or she may return to work. Both OSHA and the CDC have now said that you should not require a “return to duty” clearance from a healthcare provider when an employee returns from an acute respiratory illness, because *“medical facilities may be extremely busy and not able to provide such documentation in a timely way.”*



Can I ask my employees if they are experiencing symptoms of COVID-19 or have COVID-19?

On March 11, 2020, the CDC declared the COVID-19 a pandemic. Generally speaking, the Americans with Disabilities Act (“ADA”) prohibits employers from requesting disability-related information from employees, outside limited circumstances. But EEOC guidance says that when a pandemic has been declared, an employer may ask employees if they have, or are experiencing symptoms of COVID-19, and the inquiry will not be considered “disability-related” under the ADA. The EEOC guidance also states that employers must maintain all information about employee illnesses as confidential medical records. Employers should also keep this medical information separate from the employee’s personnel file.

Employers should keep in mind that consistency is key. If you are going to ask one employee if she has COVID-19 symptoms, you could consider asking all employees. Do not single out employees based on protected characteristics such as race, national origin, color, age, or perceived disability.



Can I take my employees’ temperatures?

Again, now that the COVID-19 has been declared a pandemic by the CDC, employers may measure employees’ body temperatures without it being considered a prohibited medical examination under the ADA. However, employers should think of the practical benefits of taking employees’ temperatures, especially because many who are diagnosed with COVID-19 do not have elevated temperatures. For employers who do choose to take temperatures, as a best practice, employers should have temperature screening conducted by a qualified medical professional. And remember – consistency is paramount, so you should ensure you are not choosing to screen employees based on protected characteristics.





Am I required to let my employees wear face masks or other personal protective equipment?

The CDC is not recommending the use of facemasks or any other protective equipment apart from those who already have COVID-19, medically compromised individuals, and healthcare providers. Relatedly, face masks and respirators must be properly used in order to function and limit further infection. And if an employee chooses on her own to wear a respirator, the employer could involuntarily bring itself within OSHA's respiratory standards.

Therefore, employers have discretion on whether to allow their usage. Employees who are immune compromised or have other health conditions may be entitled wear a face mask or other personal protective equipment as a reasonable accommodation under the ADA.

Can I prohibit business travel and personal travel?

You may prohibit all business travel, or non-essential business travel, full stop. You may also consider prohibiting all business travel to countries on the CDC travel list, countries outside the US, and or to large business-related gatherings, such as conventions.

As for personal travel, unless there is a business necessity, you may suggest, but cannot require that employees not travel to certain destinations, like areas with known outbreaks of COVID-19 or cruises. You may consider asking employees to report personal travel to any high-risk areas.



If I do let my employees work from home, is there anything I should consider?

- Review any work from home policies you have, and consider revamping your policy in light of recent developments.
 - Consider any associated expenses with working from home, such as computer and internet expenses. For example, while under Illinois law, employers are not required to pay for expenses associated with remote working, in California, employers must reimburse necessary and reasonable business expenses, such as home internet.
 - Consider security and proprietary information concerns. For example, are employees prohibited from using personal email accounts and home printers while working remotely?
- For hourly non-exempt workers under the Fair Labor Standards Act ("FLSA") and state law, you should consider how employees will record their hours worked, including required meal and rest breaks. Ensure that non-exempt workers are accurately recording all hours worked and being paid for overtime, if required.

Am I required to pay my employees who are on leave due to COVID-19?

Apart from accrued paid time off, you may be required to pay employees for time away from work recovering from, or taking care of a family member recovering from COVID-19. For example, the City of Chicago Paid Sick Leave Ordinance and the Cook County Earned Sick Leave Ordinance require that a minimum, employees earn 1 hour of paid sick leave per 40 hours worked, annually. In addition, the Family and Medical Leave Act (“FMLA”) may apply if your company employs at least 50 employees and the employee worked at least 1,250 hours during the 12 months prior to the start of leave. While the FMLA does not require paid leave, Congress is currently considering federal legislation which would require companies with 15 or more employees to allow employees to gradually earn up to seven days of paid sick leave to use during public health emergencies like the coronavirus.

Am I required to pay employees if I reduce operations?

Non-exempt employees under the FLSA and state wage laws need only be paid for time they are working. But if an exempt employee’s work is reduced, he or she must generally be paid the same minimum weekly salary regardless of how many or few hours worked. Employers should also be mindful of state law requirements regarding notification of pay rate changes, as well as the federal Worker Adjustment and Retraining Notification Act and state counterparts, which require prior notification for certain layoffs and reductions in force.

This is a rapidly evolving area of the law, so stay tuned for more developments on [Freeborn’s COVID-19 webpage](#). If you have questions, please contact Labor and Employment Partner Erin McAdams Franzblau at efranzblau@freeborn.com or (312) 360-6205.

ABOUT THE AUTHOR



Erin McAdams Franzblau

Partner

Chicago Office
(312) 360-6205

efranzblau@freeborn.com

Erin helps companies navigate employment laws, and defends employers in a wide range of class, collective, and single-plaintiff disputes before federal and state courts. She regularly counsels and litigates matters brought under state and federal antidiscrimination laws, the Fair Labor Standards Act, and the Employee Retirement Income Security Act. She is experienced in all stages of litigation, from inception through trial and post-trial appeals. She helps guide employers through sensitive internal investigations involving claims of harassment and discrimination and claims by whistleblowers. Erin also has an active OSHA practice. She regularly represents clients in the trucking, locomotive, and retail industries in investigations, emergency responses, and litigation against state and federal agencies.

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CHICAGO

311 South Wacker Drive
Suite 3000
Chicago, IL 60606
(312) 360-6000
(312) 360-6520 fax

NEW YORK

230 Park Avenue
Suite 630
New York, NY 10169
(212) 218-8760
(212) 218-8761 fax

SPRINGFIELD

217 East Monroe Street
Suite 202
Springfield, IL 62701
(217) 535-1060
(217) 535-1069 fax

RICHMOND

901 East Byrd Street
Suite 950
Richmond, VA 23219
(804) 644-1300
(804) 644-1354 fax

TAMPA

1 Tampa City Center
201 North Franklin Street
Suite 3550
Tampa, FL 33602
(813) 488-2920

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