

WORKPLACE SAFETY ISSUES AND THE COVID-19 CORONAVIRUS

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What workplace safety guidance should employers follow?

First, it is vital for employers to follow all government issued stay-at-home orders.

Essential Businesses: Employers designated as “essential businesses” by their state government should limit the employees allowed onsite in the workplace to those essential to the effective ongoing operations of the business. Nonessential employees should either work from home or told to stay home and not allowed in the workplace. The NY State list of essential business can be found on the Governor’s websiteⁱ. The federal Cybersecurity and Infrastructure Security Agency (CISA) has also issued guidance on determining critical infrastructure workers, which can be found on the CISA websiteⁱⁱ.

Nonessential Businesses: Employers who are not defined as “essential businesses” should have as many employees work from home as possible. The remaining employees should not be allowed in the workplace and encouraged to stay home.

The Occupational Safety and Health Administration (OSHA) recently published Guidance on Preparing Workplaces for COVID-19ⁱⁱⁱ, outlining the steps employers should take to help protect their workforce. OSHA has divided workplaces and work operations into four (4) risk zones, according to the likelihood of employees’ occupational exposure during a pandemic. These risk zones are useful in determining appropriate work practices and precautions.^{iv}

Very High Exposure Risk:

- Healthcare employees performing aerosol-generating procedures on known or suspected pandemic patients.
- Healthcare or laboratory personnel collecting or handling specimens from known or suspected pandemic patients.

High Exposure Risk:

- Healthcare delivery and support staff exposed to known or suspected pandemic patients.
- Medical transport of known or suspected pandemic patients in enclosed vehicles.
- Performing autopsies on known or suspected pandemic patients.

Medium Exposure Risk:

- Employees with high-frequency contact with the general population (such as schools, high population density work environments, and some high-volume retail).

Lower Exposure Risk (Caution):

- Employees who have minimal occupational contact with the general public and other coworkers (such as office employees).

What if an employee appears sick?

If any employee in the workplace has a fever, dry cough, and/or difficulty breathing, the employee should be sent home and urged to contact a healthcare provider. *Note, under current emergency conditions, unless emergency medical attention is necessary, individuals are strongly urged to use telemedicine as the first contact point for healthcare.* While the symptoms outlined above are not always associated with influenza, and the likelihood of an employee having the COVID-19 Coronavirus is extremely low, it is best to act with an abundance of caution.

In addition, supervisors should be instructed to remain calm and prevent panic among the remaining employees. Supervisors should also notify management immediately and follow instructions carefully.

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

Yes, The Equal Employment Opportunity Commission (EEOC) confirmed that it is not considered disability-related discrimination for employers to instruct employees to go home and not return to the workplace if the employee exhibits symptoms of the COVID-19 Coronavirus or the flu. Employers are also permitted to ask employees to seek medical attention and get tested for the COVID-19 Coronavirus. Further, CDC instructions call for employees who exhibit symptoms of influenza-like illness at work during a pandemic to leave the workplace.

Can I take an employee's temperature at work to determine whether they might be infected?

Yes. However, as a practical matter, an employee may be infected with the COVID-19 Coronavirus without exhibiting recognized symptoms such as a fever, so temperature checks may not be the most effective method for protecting your workforce.

That said, the EEOC confirmed that measuring employees' body temperatures is permissible given the current circumstances. While the Americans with Disabilities Act (ADA) restricts inquiries that an employer can make into an employee's medical status, and the EEOC considers taking an employee's temperature to be a "medical examination" under the ADA, the federal agency recognizes the potential need for this action now.

What precautions are needed for individuals who are taking the temperatures of employees, applicants or customers?

To protect the individual who is taking the temperature, you must first conduct an evaluation of reasonably anticipated hazards and assess the risk to which the individual may be exposed. The safest thing to do would be to assume the testers are going to potentially be exposed to someone who is infected who may cough or sneeze during their interaction. Based on that anticipated exposure, you must then determine what mitigation efforts can be taken to protect the employee by eliminating or minimizing the hazard, including personal protective equipment (PPE). Different types of devices can take temperature without exposure to bodily fluids. Further, the tester could have a face shield in case someone sneezes or coughs. Additional information is available on OSHA's website^v regarding guidance for healthcare employees (which includes recommendations on gowns, gloves, approved N95 respirators, and eye/face protection).

What should we do if one of our employees has tested positive for the COVID-19 Coronavirus?

If you are made aware that an employee has tested positive for the COVID-19 Coronavirus, you should determine which, if any of the other employees worked closely with the individual. If possible, ask the infected employee to identify everyone they worked with, or was in close proximity to (six feet or less), during the previous 14 days. This will help you make as full a list as possible of those who may have been exposed to the virus. Employees who had contact with the infected employee should be notified of the potential exposure and sent home immediately with instructions to self-quarantine for 14 days. Employees not at work, and nonemployees who were in contact with the infected employee, should be notified of the possible exposure and told to self-quarantine for 14 days. Further, when notifying employees and nonemployees of their potential exposure, do not identify the infected employee, as doing so could be a violation of confidentiality laws and result in a legal action. If the infected employee's worksite is in a shared office building or area, notify the building's management so they can take the appropriate actions.

The CDC also provides recommendations for most non-healthcare businesses that have suspected or confirmed COVID-19 Coronavirus cases^{vi}:

- Close off areas used by anyone with symptoms or a positive test. Wait 24 hours, or as long as practical before beginning cleaning and disinfection. This will help minimize the potential for exposure to cleaning staff. Open outside doors and windows to increase air circulation in the area.
- All areas used by anyone with symptoms or a positive test should be cleaned and disinfected (i.e., offices, bathrooms, and common areas), focusing especially on frequently touched surfaces.

- To clean and disinfect:
 - Dirty surfaces should be cleaned using a detergent or soap and water prior to disinfection.
 - For disinfection, diluted household bleach solutions, alcohol solutions with at least 70% alcohol, and most common EPA-registered household disinfectants should be effective.
 - Diluted household bleach solutions can be used if appropriate for surfaces. Follow manufacturer's instructions for application and proper ventilation. Check to ensure the product is not past its expiration date. *Never mix household bleach with ammonia or any other cleanser.* Unexpired household bleach will be effective against the COVID-19 Coronaviruses when properly diluted.
 - Cleaning staff should wear disposable gloves and gowns at all times during the cleaning process, including handling trash.
 - Gloves and gowns should be compatible with the disinfectant products being used.
 - Additional personal protective equipment (PPE) might be required based on the cleaning/disinfectant products being used and whether there is a risk of splash. Follow the manufacturer's instructions regarding other protective measures recommended on the product labeling.
 - Cleaning staff should carefully remove gloves, gowns, and other PPE to avoid contaminating themselves and the surrounding area. Cleaning staff should also remember to thoroughly wash their hands after removing gloves.
 - Employers should develop policies for worker protection and provide training to all cleaning staff before allowing them to conduct any cleaning or disinfecting. Training should include when to use PPE, what PPE is necessary, how to properly don (put on), use, and doff (take off) PPE, and how to properly dispose of PPE.

Note: If cleaning and/or disinfecting products, including household cleaners, are being used more frequently than an employee would use them at home, the employer must ensure workers are trained on the hazards of the cleaning and disinfecting chemicals used and maintain a written program, including Material Safety Data Sheets, in accordance with OSHA's Hazard Communication standard (29 CFR 1910.1200).

What should we do if an employee has a suspected, but unconfirmed case of the COVID-19 Coronavirus?

If an employee is suspected to have been infected with the COVID-19 Coronavirus, treat the situation as if it is a confirmed case. If the employee is in the workplace, separate the employee and follow the steps above for a confirmed infection. When communicating with potentially exposed employees and nonemployees, be sure to emphasize that the potentially infected employee has not tested positive for the COVID-19 Coronavirus but is exhibiting symptoms similar to those of the virus which may lead to a positive diagnosis. Further, when notifying employees and nonemployees of their potential exposure, do not identify the potentially infected employee, as doing so could be a violation of confidentiality laws and result in a legal action. If the potentially infected employee's worksite is in a shared office building or area, notify the building's management so they can take the appropriate actions.

How can we distinguish between a “suspected but unconfirmed” case of COVID-19 and another more typical illness?

There is no way for an employer to make this determination. However, if the employee is exhibiting one or more of the symptoms of the COVID-19 Coronavirus, or they are at risk for exposure based on other factors, the employer should follow the process above regarding an infected employee.

The EEOC has confirmed that employers can ask about an employee's symptoms—even if the questions may be disability-related—because the employer would be considered to have a *“reasonable belief based on objective evidence that the severe form of pandemic influenza poses a direct threat.”*

Questions regarding an employee's symptoms should be focused on the information necessary to distinguish the symptoms of the COVID-19 Coronavirus from those of a common cold and seasonal flu. Questions should include whether the employee is experiencing:

- ***Fever**
- ***Cough (typically a “dry” cough)**
- ***Shortness of breath**
- Fatigue
- Sneezing
- Aches and pains
- Runny or stuffy nose
- Sore throat
- Headaches
- Diarrhea

The most common symptoms of COVID-19 are fever, a dry cough, and sometimes shortness of breath. A chart provided by the World Health Organization (WHO) (attached at the end of this FAQ document) can help employers and employees distinguish between the COVID-19 Coronavirus, the seasonal flu, or a common cold.

Employers should note that all information about an employee's illness, including the COVID-19 Coronavirus, must be maintained as a confidential medical record in compliance with the ADA.

What should we do if an employee self-reports that they were exposed to someone with a presumptive positive diagnosis of the COVID-19 Coronavirus?

If an employee self-reports that they were exposed to someone with a presumptive positive diagnosis of the COVID-19 Coronavirus, the employer should treat the situation as if it is a confirmed case. If the employee is in the workplace, separate the employee and follow the steps above for a confirmed infection. When communicating with potentially exposed employees and nonemployees, be sure to emphasize that the potentially infected employee has not tested positive for the COVID-19 Coronavirus but was exposed to someone who has tested positive for the virus. Further, when notifying employees and nonemployees of their potential exposure, do not identify the potentially infected employee, as doing so could be a violation of confidentiality laws and result in a legal action. If the potentially infected employee's worksite is in a shared office building or area, notify the building's management so they can take the appropriate actions.

What should we do when an employee, who was interacting with clients and/or customers, is notified that they were exposed to the COVID-19 Coronavirus?

If an employer is notified that an employee, who has had contact with clients/customers, may have been exposed to the COVID-19 Coronavirus, the employer should treat the situation as if it is a confirmed case. If the employee is in the workplace, separate the employee and follow the steps above for a confirmed infection. When communicating with potentially exposed employees and nonemployees, be sure to emphasize that the potentially infected employee has not tested positive for the COVID-19 Coronavirus but was exposed to someone who has tested positive for the virus. Further, when notifying employees and nonemployees of their potential exposure, do not identify the potentially infected employee, as doing so could be a violation of confidentiality laws and result in a legal action. If the potentially infected employee's worksite is in a shared office building or area, notify the building's management so they can take the appropriate actions.

If an employee has, or is suspected to have the COVID-19 Coronavirus, are we responsible for reporting it to the local/state health department or the CDC?

Employers have no obligation to report a suspected or confirmed case of the COVID-19 Coronavirus to the local/state health department or the CDC. Healthcare providers are responsible for reporting positive test results to the appropriate government agencies.

Can we require employees to notify the company if they have been exposed, have symptoms, and/or have tested positive for the COVID-19 Coronavirus?

Yes, employees who have symptoms of the COVID-19 Coronavirus while at work should notify their supervisor or company management immediately.

Employees experiencing symptoms outside the workplace, suspect or know they have been exposed to someone that is exhibiting symptoms, or has tested positive, should call or email their supervisor or company management immediately.

Endnotes

ⁱ <https://esd.ny.gov/guidance-executive-order-2026>

ⁱⁱ <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

ⁱⁱⁱ <https://www.osha.gov/Publications/OSHA3990.pdf>

^{iv} https://www.osha.gov/Publications/influenza_pandemic.html#difference

^v <https://www.osha.gov/SLTC/covid-19/controlprevention.html#health>

^{vi} <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

Symptoms

Coronavirus

Symptoms range from mild to severe

Cold

Gradual onset of symptoms

Flu

Abrupt onset of symptoms



Fever

Common

Rare

Common



Fatigue

Sometimes

Sometimes

Common



Cough

Common*
(usually dry)

Mild

Common*
(usually dry)



Sneezing

No

Common

No



Aches and
pains

Sometimes

Common

Common



Runny or
stuffy nose

Rare

Common

Sometimes



Sore throat

Sometimes

Common

Sometimes



Diarrhea

Rare

No

Sometimes
for children



Headaches

Sometimes

Rare

Common



Shortness
of breath

Sometimes

No

No

Sources: World Health Organization, Centers for Disease Control and Prevention