

# Insights

## What Can We Do? Coronavirus Guidance for Employers

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Employers are increasingly asking questions about what plans to put in place and how to respond to instances of Coronavirus disease (COVID-19) in the workplace. Employers are also rightfully concerned about the legal limits as to what they can say to employees and when an employee can be excluded from the workplace due to illness.

Both the Centers for Disease Control and Prevention (CDC) and the U.S. Equal Employment Opportunity Commission (EEOC) have issued guidance on the issue of Coronavirus in the workplace. Specifically, the CDC has issued Interim Guidance for Employers for Planning and Responding to Coronavirus Disease, which can be accessed [here](#). The CDC's guidance also contains links to additional resources where employers can find the most up-to-date information about the spread of Coronavirus, as well as general information about symptoms, severity, and transmission.

The EEOC, which enforces workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act, including the requirements for providing reasonable accommodation and rules about medical examinations and inquiries, has advised that employers may follow the **CDC's guidance discussed above**. Further, the EEOC has pointed employers to its previously issued guidance titled, **"Pandemic Preparedness in the Workplace and the Americans with Disabilities Act"**. Both the CDC's and EEOC's guidance documents are summarized below.

### CDC Guidance

Based on the CDC's interim guidance, here are steps for employers to take and factors to consider in planning for and responding to issues relating to Coronavirus in the workplace:

- (1) **Focus on cleanliness of work areas.** Employers should perform routine cleaning of frequently touched surfaces in the workplace, including workstations, countertops, and doorknobs. Employers may also consider providing hand sanitizer and disposable wipes so employees can assist in protecting themselves and keeping commonly used surfaces clean.
- (2) **Encourage sick employees to stay home.** Inform employees of the symptoms of acute respiratory illness and advise that they not return to work until they free of fever and any other symptoms for at least 24 hours. Employers may want to provide greater flexibility with respect to sick leave policies given the special

circumstances, which may also include not requiring a doctor's note for absences or return to work, as providers may not be able to provide documentation as quickly as the employer typically requires. Employers should also consider providing greater flexibility to allow employees to stay home to care for sick family members. In addition to time off under the employer's sick leave policies, an employee may also be entitled to leave under the Family and Medical Leave Act due to the employee's own illness or that of a family member.

(3) **Remove sick employees from the workplace.** The CDC recommends that an employee who has acute respiratory illness symptoms be sent home immediately. While the Americans with Disabilities Act and corresponding state and local laws prohibit discrimination against an employee based on a disability, including regarding an individual as disabled, an employer is permitted to send home an employee who appears to have a contagious disease because that employee poses a direct threat to other employees. Again, employers should consider being flexible with respect to absence policies to encourage the employee to remain off of work for an appropriate length of time when ill.

(4) **Emphasize hand hygiene and respiratory etiquette.** The CDC has published specific guidance and offers posters to employers on the topics of coughing and sneezing etiquette and hand hygiene. Employers are also encouraged to provide employees with tissues, hands-free disposal receptacles, and soap and water and alcohol-based hand rubs, and to advise on proper hand-washing techniques, including through washing hands with soap and water for at least 20 seconds.

(5) **Advise traveling employees.** The CDC publishes Traveler's Health Notices that contain the most recent guidance and recommendations regarding travel to specific countries in the wake of Coronavirus. Employees should self-monitor for any symptoms of acute respiratory illness and promptly seek care and notify their supervisor if they become ill while traveling.

(6) **Share information with coworkers.** While the ADA places strict limitations on an employer's ability to disclose employees' medical information, if an employer learns that an employee has tested positive for Coronavirus, the CDC recommends informing other employees of their possible exposure in the workplace, while maintaining the confidentiality of the infected employee. Further, those coworkers should be encouraged to conduct a risk assessment based on available information as to their potential exposure. The CDC has provided guidance on conducting Coronavirus risk assessments [here](#).

### **EEOC Guidance**

The EEOC recently addressed Coronavirus on its website by endorsing the CDC's guidance for employers and linking employers to the EEOC's prior guidance on handling pandemics in the workplace. Interestingly, the EEOC does not specifically state that it considers Coronavirus a pandemic, but does suggest that the guidance on pandemics be used in navigating Coronavirus-like events. The reason this is relevant is because it could dictate whether an employee who contracts Coronavirus is considered disabled under the ADA, which in turn determines what information can be requested from the employee. Here is a summary of the guidance the EEOC suggests employers follow as it relates to Coronavirus:

(1) **Asking employees why they are absent.** If an employee calls in sick, the employer is permitted to ask the employee whether the reason for the absence is due to Coronavirus, or symptoms of Coronavirus. Even if the

inquiry would be considered disability-related, the question is permitted if there is a reasonable belief due to objective evidence that Coronavirus poses a direct threat. Employers must still remember to keep the information confidential under the requirements of the ADA, including only sharing the information with someone who has a need to know of the employee's particular medical issue, which rarely includes the employee's supervisor.

(2) **Taking the body temperature of employees.** The EEOC has advised that if Coronavirus would be considered a pandemic that has become widespread in the community, then an employer can require the employee's body temperature be measured.

(3) **Excluding employees from the workplace if Coronavirus symptoms are present.** Employers can require employees who are experiencing symptoms of Coronavirus to leave the workplace and remain at home until no longer contagious. Even if the condition would be considered a disability, the EEOC advises that this action is permitted when the illness poses a direct threat.

(4) **Asking for fitness for duty certifications before return to work.** Employers are permitted to request certification that an employee who has suffered from Coronavirus is able to return to work, in compliance with its policies, although in the context of a pandemic, it may be difficult to promptly receive this information. Employers could consider altering their practices, for example, to allow an email to suffice rather than the completion of a particular form.

(5) **Questioning employees post-travel.** Employers may ask an employee whether he or she is experiencing any Coronavirus symptoms if that employee has traveled to a location where the CDC or local public health officials have recommended that people who have traveled to such location stay at home for several days after visiting. Employers should remain vigilant against all forms of unlawful discrimination in connection with Coronavirus, particularly with respect to reported **incidences of national origin discrimination**. The EEOC offers guidance to employers on national origin discrimination, available **here**.

Employers who require any additional assistance in planning for or responding to Coronavirus issues in the workplace are encouraged to reach out to any member of **Krieg DeVault's Employment Law team**.