

**PLANNING FOR THE RETURN TO WORK
DURING COVID-19 PANDEMIC**

To: ICRMT Members
From: O'Halloran, Kosoff, Geitner & Cook, LLC,
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Re: Planning for Return to Work during the COVID-19 Pandemic
Date: April 24, 2020

Employers will likely face many new challenges when their employees return to the workplace in the midst of the COVID-19 pandemic. Our office has fielded a wide range of inquiries from members regarding employment practices and COVID-19. The following memo is intended to make employers aware of issues that may arise when their employees return to work. We have summarized guidance from OSHA, the CDC, the Illinois Department of Employment Security (IDES), the Department of Labor (DOL) and the EEOC. Every workplace is unique, and therefore, employers are encouraged to work with their local health department and legal adviser to create a plan to keep employees safe and to address personnel issues that may arise. The following guidance and “Frequently Asked Questions” are intended to address issues that employers may face in the coming weeks.

Table of Contents

OSHA Guidance.....Page 2

CDC Guidance.....Page 5

Layoffs and IDES Guidance.....Page 10

EEOC Guidance.....Page 16

DOL Guidance.....Page 24

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OSHA CONSIDERATIONS

OSHA has prepared a pamphlet for employers on COVID-19 issues which can be accessed [here](#). The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace.

The following guidance does not include OSHA recommendations concerning workers whose activities involve close and prolonged/repeated contact with sick people.

1. What are an employer's duties and responsibilities under OSHA?

The Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

2. What basic infection prevention measures should employers implement?

- Promote frequent and thorough hand washing by providing employees, customers, and visitors with a place to wash their hands. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol.
- Encourage workers to stay home if they are sick.
- Encourage respiratory etiquette, including covering coughs and sneezes.
- Where the wearing of masks is mandated, ensure that all employees and visitors are wearing proper face coverings.
- Consider ordering supplies of disposable face masks for visitors to use upon entry.
- Provide employees and customers with trash receptacles and tissues.
- Consider extending telecommuting and flexible work hours such as staggered shifts, to increase the physical distance among employees and between employees.
- Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible.
- Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment. Use EPA-approved disinfectants that are labeled as protecting against emerging viral pathogens. Such products are expected to be effective against SARS-CoV-2 based on data for harder to kill viruses. Follow the manufacturer's instructions for

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use of all cleaning and disinfection products (e.g., concentration, application method and contact time, PPE).

3. What steps can employers take to identify and isolate sick people?

- Employers should inform and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure.
- Develop policies and procedures for employees to report when they are sick or experiencing symptoms of COVID-19.
- Develop policies and procedures for immediately isolating people who have signs and/or symptoms of COVID-19, and train workers to implement them. Move potentially infectious people to a location away from workers, customers, and other visitors. Although most worksites do not have specific isolation rooms, designated areas with closable doors may serve as isolation rooms until potentially sick people can be removed from the worksite.

4. What physical changes should employers consider making to workplaces?

- Installing high-efficiency air filters.
- Consider separating desks or workspaces to ensure social distancing.
- Increasing ventilation rates in the work environment.
- Installing physical barriers, such as clear plastic sneeze guards.
- Installing a drive-through window for customer service.
- Specialized negative pressure ventilation in some settings, such as for aerosol generating procedures (e.g., airborne infection isolation rooms in healthcare settings and specialized autopsy suites in mortuary settings).

5. What policies should employers consider implementing to protect employees?

- Encourage sick workers to stay at home.
- Minimize contact among workers, clients, and customers by replacing face-to-face meetings with virtual communications and implementing telework if feasible.
- Where appropriate, limit customers' and the public's access to the worksite, or restrict access to only certain workplace areas.
- Establish alternating days or extra shifts that reduce the total number of employees in a facility at a given time, allowing them to maintain distance from one another while maintaining a full onsite work week.

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- Discontinuing nonessential travel to locations with ongoing COVID-19 outbreaks. Regularly check CDC travel warning levels [here](#).
- Develop emergency communications plans, including a forum for answering workers' concerns and internet-based communications, if feasible.
- Provide workers with up-to-date education and training on COVID-19 risk factors and protective behaviors (e.g., cough etiquette and care of PPE).
- Train workers who need to use protecting clothing and equipment how to put it on, use/wear it, and take it off correctly, including in the context of their current and potential duties. Training material should be easy to understand and available in the appropriate language and literacy level for all workers.

6. What practices should employers consider implementing for shared spaces in the workplace?

- Consider limiting one employee at a time or spacing employees in break rooms, copy rooms, restrooms.
- Ensure that 6-foot social distancing is maintained among employees and visitors.
- Consider purchasing no-touch trash cans if there are currently lids on trash containers.
- Go through the workplace and make a list of all areas that multiple employees will touch during the day and provide appropriate wipes for employees to use before and after contact with such items as copiers, refrigerators, etc.
- Consider leaving doors propped open to eliminate multiple individuals touching the door.
- Post hand-washing sign reminders near all sinks.

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CDC GUIDANCE

In conjunction with providing a safe workplace, it is important to stay educated on the latest CDC guidance to avoid transmission of COVID-19 in the workplace. As the healthcare community learns more about the virus, the CDC guidelines have evolved. The following information is based on CDC guidance, and is current as of the date of this memo, but it is not intended to summarize all CDC guidance. Member entities are encouraged to frequently visit the CDC website to ensure that they are relying upon the most current guidance. The CDC website can be accessed [here](#).

1. What are the symptoms of COVID-19?

People with COVID-19 have had a wide range of symptoms, from mild to severe. Symptoms tend to appear within 2-14 days after exposure. Currently known symptoms include fever, cough, shortness of breath, difficulty breathing, chills, repeated shaking with chills and muscle pain.

2. How is COVID-19 spread?

The virus is thought to spread mainly from person-to-person between people who are in close contact with one another (within about 6 feet). The virus is spread through respiratory droplets produced when an infected person coughs, sneezes or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. It may be possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one's own mouth, nose, or eyes. Some recent studies have suggested that COVID-19 may be spread by people who are not showing symptoms.

3. What should you do if you are sick?

- Do not come to work. Stay home except to get medical care. Most people with COVID-19 have mild illness and can recover at home without medical care. Do not leave your home, except to get medical care. Get rest and stay hydrated.
- Stay in touch with your doctor.
- Call before you get medical care.

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- Be sure to get immediate care if you have trouble breathing, or have any other emergency warning signs, or if you think it is an emergency.
- Avoid public transportation, ride-sharing, or taxis.
- Separate yourself from other people and pets in your home. As much as possible, stay in a specific room and away from other people and pets in your home. Also, you should use a separate bathroom, if available. If you need to be around other people or animals in or outside of the home, wear a cloth face covering.
- Monitor your symptoms. Common symptoms of COVID-19 are set forth above. Trouble breathing is a more serious symptom that means you should get medical attention.
- Follow care instructions from your healthcare provider and local health department. Your local health authorities may give instructions on checking your symptoms and reporting information.
- If your symptoms worsen, get medical attention immediately. Call 911 if you have a medical emergency. Notify the operator that you have, or think you might have, COVID-19. If possible, put on a cloth face covering before medical help arrives.

4. What should I do if I might have been exposed to someone with COVID-19?

If you or someone in your home might have been exposed, you should:

- Self-Monitor
- Be alert for symptoms. Watch for fever, cough, or shortness of breath.
- Take your temperature if symptoms develop
- Practice social distancing. Maintain 6 feet of distance from others, and stay out of crowded places.

5. What should I do if I have had close contact with a person with COVID-19?

If you feel healthy but recently had close contact with a person with COVID-19, or you recently traveled from somewhere outside the U.S. or on a cruise ship or river boat, you should:

- Self-Quarantine
- Check your temperature twice a day and watch for symptoms.
- Stay home for 14 days and self-monitor.

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- If possible, stay away from people who are high-risk for getting very sick from COVID-19.

Note that guidance for emergency responders and healthcare professions may vary. (See guidance CDC guidance [here](#).)

6. What if I have been diagnosed with COVID-19 or think I may have it?

If you have been diagnosed with COVID-19, or are waiting for test results, or have symptoms such as cough, fever, or shortness of breath, you should:

- Self-Isolate
- Stay in a specific “sick room” or area and away from other people or animals, including pets.
- If possible, use a separate bathroom.
- Follow instructions from your healthcare provider and the CDC (see below) about how long to self-isolate.

7. When can you discontinue home isolation if you have been sick?

According to current guidance from the CDC, people with COVID-19 who have stayed home (home isolated) can stop home isolation under the following conditions:

If you will not have a test to determine if you are still contagious, you can leave home after: (1) You have been fever-free for at least 72 hours (that is three full days of no fever without the use medicine that reduces fevers); (2) Other symptoms have improved (for example, when your cough or shortness of breath have improved); and (3) At least 7 days have passed since your symptoms first appeared.

If you will be tested to determine if you are still contagious, you can leave home after these three things have happened: (1) You no longer have a fever (without the use medicine that reduces fevers); (2) Other symptoms have improved (for example, when your cough or shortness of breath have improved); and (3) You received two negative tests in a row, 24 hours apart.

In all cases, follow the guidance of the CDC, your healthcare provider and local health department. The decision to stop home isolation should be made in consultation with your healthcare provider and state and local health departments.

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8. What should an employer do if an employee in the workplace is suspected of or tests positive for COVID-19?

If a sick employee is suspected or confirmed to have COVID-19, you should immediately isolate the employee and send them home if they are still at work. You should follow the CDC [cleaning and disinfection recommendations](#). (See Question 10, below). You should advise anyone who has had contact with the employee that they should monitor for symptoms. (See Question 4, above.) Anyone who has had close contact with the employee should be sent home to self-isolate (See Question 5, above). The CDC guidance indicates that factors to consider when defining close contact include proximity, the duration of exposure (e.g., longer exposure time likely increases exposure risk), whether the individual has symptoms (e.g., coughing likely increases exposure risk) and whether the individual was wearing a facemask (which can efficiently block respiratory secretions from contaminating others and the environment). Additionally, the CDC states that data are insufficient to precisely define the duration of time that constitutes a prolonged exposure. Recommendations vary on the length of time of exposure from 10 minutes or more to 30 minutes or more. In healthcare settings, it is reasonable to define a prolonged exposure as any exposure greater than a few minutes because the contact is someone who is ill. Brief interactions are less likely to result in transmission; however, symptoms and the type of interaction (e.g., did the person cough directly into the face of the individual) remain important.

9. What protections should an employee take if providing care to someone with COVID-19?

The CDC has provided guidance on appropriate personal protective equipment including instructions on proper donning and doffing equipment. Guidance can be accessed [here](#).

10. How do you clean and disinfect in the workplace?

Clean and disinfect high-touch surfaces like tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, sinks, etc. frequently. Soap and water is recommended for cleaning. EPA-registered household disinfectants, diluted bleach solutions (4 tsp. per quart of water) and alcohol solutions (70% alcohol) are recommended for disinfecting. Wear disposable gloves to clean and disinfect. After someone is sick in the workplace, close off any areas used by the person. Open

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windows and doors for 24 hours if possible, and clean and disinfect all surfaces used by the person. Detailed CDC recommendations can be found [here](#).

11. How can an employer maximize its supply of PPE?

The CDC has provided information for employers on maximizing its inventory of PPE. That guidance can be accessed [here](#).

12. Has the CDC provided specific guidance for the healthcare setting?

Yes. CDC guidance for healthcare professionals specifically regarding clinical care can be accessed [here](#) and [here](#).

13. Has the CDC provided guidance for emergency responders and critical infrastructure employees?

Yes. CDC guidance specifically geared towards emergency responders can be found [here](#) and guidance for critical infrastructure employees can be found [here](#).

14. Has the CDC developed guidance for local health departments?

Yes. CDC guidance for local health departments can be accessed [here](#).

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LAYOFF AND UNEMPLOYMENT INFORMATION FROM IDES

Layoffs or terminations may become necessary. The Illinois Department of Employment Security (IDES) has updated its guidance for employers and employees in light of the COVID-19 pandemic. IDES guidance can be found [here](#) and [here](#).

1. If we considering terminating or laying an employee off, are there specific procedures that need to be followed?

If an employee is subject to a collective bargaining agreement, other contract, statutory protections, or other employer policies, you may need to follow specific procedures when terminating or laying an employee off. We recommend that you contact your legal adviser to ensure that you are following any required procedures before taking steps to terminate or lay an employee off. In addition, any employee who is laid off must be provided information from IDES which can be accessed [here](#).

2. What is Unemployment Insurance (UI)?

In general, UI provides temporary income maintenance to individuals who have been separated from employment through no fault of their own and who meet all eligibility requirements, including the requirements that they be able and available for work, register with the state employment service and actively seek work.

3. What are the unemployment programs under the federal stimulus legislation?

The federal legislation provides for multiple unemployment programs which are, generally:

- Pandemic Unemployment Assistance (PUA) – provides a total of 39 weeks of benefits for individuals who are not eligible for regular unemployment benefits who are unemployed due solely to COVID-19 (federally funded);
- Pandemic Emergency Unemployment Compensation (PEUC) – provides for an additional 13 weeks of unemployment benefits for individuals who have exhausted their regular unemployment benefits (federally funded); and
- Federal Pandemic Unemployment Compensation (FPUC) – provides for an additional \$600 per week for individuals receiving regular unemployment benefits,

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PUA, PEUC, or extended benefits if they are triggered under Illinois law, through July 31, 2020 (federally funded).

4. If an employee receives unemployment benefits as a result of COVID-19, is the employer liable for the cost of benefits?

The programs under the federal stimulus legislation are funded by the federal government and not Illinois. For regular unemployment compensation, employers generally contribute to the cost of benefits for their former employees. The contribution rate of an experience-rated employer is based, in part, on the amount of unemployment benefits paid to the employer's former employees, so this rate may rise when an employer furloughs or lays employees off due to COVID-19. If legislation is passed making claims related to COVID-19 non-chargeable to the employer, then employers furloughing or laying off workers due solely to COVID-19 would not be required to contribute to the benefit costs, and the costs would be "pooled" between all employers. This would likely result in increased unemployment tax rates in future years for all employers because the entire pool of employers would need to be tasked with replenishing the benefit trust fund.

5. Are there resources for employers when laying employees off?

Rapid Response Services are available to employers for natural or other disasters, that results in mass job dislocation. The State Dislocated Worker Unit coordinates with employers to provide on-site information to workers and employers about employment and retraining services designed to help participants retain employment when feasible, or obtain re-employment as soon as possible. For more information, visit [Rapid Response Services for Businesses](#) or contact your local Illinois workNet Center.

6. How does IDES know if a claimant's unemployment is due to COVID-19?

IDES has modified the on-line application to provide a check box indicating the claimant's separation or lay-off is due to the Covid-19 crisis.

7. If I want to protest a claim, how long do I have?

You have 10 calendar days to protest in a timely manner. Protests must be postmarked or faxed by the due date indicated on the Notice of Claim.

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8. Are protest deadlines going to be extended?

At this time, protest deadlines have not been extended. Any notice of a claim that has already been issued must be responded to timely for the employing unit to have status to protest an issue of the claimant's eligibility.

9. What should employers do if unable to get separation or wage information within the 10-day limit?

Employers should make every effort to provide a response to the notice of claim within the 10-day requirement. If separation or wage information cannot be provided within that time frame, then employers can supplement the response once the stay-at-home directive is lifted and when access to the information is available.

10. Are hearings being conducted?

Yes, although the process may be slower than usual due to technological issues and the number of claims being received.

11. Will parties be notified when hearings are rescheduled?

Yes. If a hearing is rescheduled, then all parties in that case will be notified that the hearing has been rescheduled. IDES will send notices informing the parties of the new hearing date.

12. If witnesses or documents are unavailable due to COVID-19, will a hearing continuance be allowed?

Administrative law judges will continue to follow the continuance rules which allow for continuances.

13. Are employers going to be given extra time for filing the monthly payroll or quarterly wage reports?

At this time, the law has not been changed to give employers extra time for filing monthly or quarterly wage reports. However, employers are reminded that they can file a written request with the Director prior to the wage report filing due date to ask for an

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extension to file the wage report. The maximum extension for filing a monthly wage report is 15 days. The maximum extension for filing a quarterly wage report is 30 days. In order to make the request for an extension, the employer must state a reason for the request. Employers are encouraged to file their requests for extension via the MyTax website.

14. Will my employees be eligible for unemployment if I schedule them to work every other week?

An employee who is unemployed for a week could be eligible for benefits, even if he or she is scheduled to return to work the next week, then off the next, and so on.

15. I received a Notice of Claim and I believe the claimant should be eligible for benefits, should I respond to the notice?

If the claimant was temporarily or permanently laid off and you believe there is no reason for disqualification, you may choose to not respond to the notice.

16. If an employer lays employees off due to a lack of work caused by the coronavirus (COVID-19), will the employees be eligible for unemployment insurance benefits?

Unemployment benefits are available to any individual who is unemployed through no fault of their own and who meet all eligibility requirements. If an employer must lay off employees due to loss of production or other economic issues related to the COVID-19 outbreak, individuals may be eligible for benefits if they meet the minimum monetary and weekly eligibility criteria.

17. If an employer is not ordered closed, however, because of lower demand it needs to cut hours, are the employees able to receive unemployment even though they are still employed?

IDES wants to support employers as they deal with the economic stresses imposed by the COVID-19 pandemic. If you are temporarily reducing hours of work for your full-time employees, they may be able to receive benefits, if they meet the minimum monetary eligibility requirements. If your workers earn less than their weekly unemployment benefit amount, they would be eligible for reduced unemployment

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benefits, or in some cases their entire benefit for the week. The requirement to actively search for work in this situation is waived so when business returns to normal, your workforce is ready.

18. If the employer agrees to pay the individual either part or all of their normal salary or wage, but the individual is out of work, is the individual still eligible for unemployment benefits if the employer's business is shut down due to COVID-19?

Individuals receiving their normal salary during any shutdown period would not be considered an unemployed individual and would be ineligible for benefits. However, if an individual is receiving part of their salary or wage that is less than their unemployment weekly benefit amount, they may be considered partially unemployed and would be eligible. Employers are advised to inform staff receiving any part of their salary or wage that failure to report all earnings when receiving unemployment benefits is considered fraud and is punishable by penalties, imprisonment or both.

19. If an employee is in a mandatory quarantine because of suspicion of having the coronavirus, will they be eligible for unemployment benefits?

An individual who leaves work because he or she is deemed unable to perform their normal duties by a licensed, practicing physician because they have been diagnosed with COVID-19, and the employer is unable to accommodate them, would have good cause for leaving work. However, to receive benefits, the individual must show they are able and available for work and searching for work that may be reasonably performed from home (e.g., transcribing, data entry, virtual assistant services, etc.). They must also meet all other eligibility requirements.

20. If an employee imposes a self-quarantine because of the coronavirus, will they be eligible for unemployment benefits.

Generally, no. Unemployment benefits are available to individuals who are totally or partially unemployed through no fault of their own. If your business has not been ordered closed by the Governor, shutdown due to lack of work, or the employee has not been instructed by a licensed, practicing physician of the need to self-quarantine due to exposure of the individual or members of the individual's household to COVID-

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19, they may not be eligible for benefits. But each case is unique and must be reviewed considering the facts to make a proper determination of eligibility.

21. If an employee is ill because of COVID-19 and unable to work, will they be eligible for unemployment benefits?

No. Federal requirements mandate that claimants be able to work, available for work, and actively seeking suitable work. If an individual is ill and unable to work, they would not meet these requirements

22. I was forced to furlough or lay off employees because of COVID-19, but I continue to pay their COBRA or health/dental/eye care premiums. Will these payments affect their unemployment benefits?

An employer's payment of COBRA or health/ dental/eye care premiums is not considered to be wages for purposes of determining unemployment benefits and will not disqualify an employee from receiving benefits. Similarly, such payments are not counted toward the unemployment tax rate for the employer. However, if the employer pays the worker the amount of the premiums for the worker to pay for the coverage instead of paying them to a third-party insurer, that is treated differently and could be disqualifying income for unemployment benefits.

23. I was forced to furlough some workers, but now they refuse to come back to work. What should I do?

Ultimately, this is a business decision by the employer, but if an employer makes an offer to re-hire an employee, the employee refuses, and the employee remains on unemployment insurance, the employer should file notice with IDDES.

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EEOC AND GENERAL EMPLOYMENT GUIDANCE

The EEOC has relaxed certain recommendations relating to medical examinations of employees because COVID-19 poses a direct threat in the workplace. OKGC previously issued an explanatory memorandum on the EEOC guidance which can be accessed at ICRMT.com. The EEOC has continued to provide updated guidance for employers. Member entities are encouraged to frequently visit the EEOC website for the most current information which can be accessed [here](#).

Disability-Related Inquiries and Medical Exams

- 1. How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?**

During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these now include symptoms such as fever, chills, cough, shortness of breath, sore throat, loss of smell or taste and gastrointestinal problems such as nausea, diarrhea, and vomiting. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

- 2. What can an employer do at the current time to determine if employees physically coming into the workplace have COVID-19 or symptoms associated with the disease?**

An employer may ask all employees who are physically entering the workplace if they have COVID-19, symptoms associated with COVID-19 or if they have been tested for COVID-19.

- 3. May an employer ask an employee who is physically coming into the workplace whether they have family members who have COVID-19 or symptoms associated with COVID-19?**

No. The Genetic Information Nondiscrimination Act (GINA) prohibits an employer from asking employees medical questions about family members. To avoid violating GINA, the employer should ask whether the employee has had contact with anyone

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who the employee knows has been diagnosed with COVID-19, or who may have symptoms associated with the disease.

4. May an employer take the body temperature of employees during the COVID-19 pandemic?

Yes. Employers should be aware that some people with COVID-19 do not have a fever. Employers must maintain all medical information about an employee as a confidential medical record in compliance with the ADA.

5. What if an employee refuses to permit the employer to take his temperature, or refuses to answer questions about whether he has COVID-19, or symptoms associated with COVID-19, or has been tested for COVID-19?

An employer may bar an employee from physical presence in the workplace if he refuses to have his temperature taken or answer questions about whether he has COVID-19, symptoms associated with COVID-19, or has been tested for COVID-19. The employer may wish to ask the reasons for the employee's refusal and reassure the employee that these steps are being taken to ensure the safety of everyone in the workplace and the information provided by the employee will be kept confidential.

6. Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace.

7. When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

Yes. As a practical matter, however, doctors and other health care professionals may be too busy during a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

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8. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace?

Yes. The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” Under current circumstances of the COVID-19 pandemic, employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus. Employers should ensure that the tests are accurate and reliable and be sure to keep all testing information in a confidential medical record in compliance with the ADA.

Confidentiality of Medical Information

9. If a supervisor learns and confirms that an employee has COVID-19 or has symptoms associated with the disease, what should the supervisor do?

The supervisor should report to appropriate employer officials so that they can take actions consistent with guidance from the CDC and other public health authorities. A designated representative of the employer may interview the employee to get a list of people with whom the employee possibly had contact through the workplace, so that the employer can then take action to notify those who may have come into contact with the employee.

10. When an employer notifies employees in the workplace that they may have come into contact with an employee who has COVID-19 or who has symptoms of COVID-19, can the employer provide the name of the infected or possibly infected employee?

No. The ADA requires that an employer keep all medical information about employees confidential, even if that information is not about a disability. Information that an employee has symptoms of, or a diagnosis of, COVID-19, is medical information. Employers are prohibited from confirming or revealing the employee’s identity.

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- 11. Is an employee who knows that a co-worker has COVID-19 or symptoms associated with COVID-19 prevented under the ADA from disclosing that information to a supervisor?**

No. It is not a violation of the ADA for the employee to inform his supervisor about the co-worker's condition.

- 12. May an employer store information it obtains from an employee related to COVID-19 in the employee's existing medical record?**

Yes. An employer may store all medical information related to COVID-19 in existing medical files. This includes an employee's statement that he has the disease or suspects he has the disease, or the employer's notes or other documentation from questioning an employee about symptoms. The medical files must be stored separately from the employee's personnel file.

- 13. If an employer requires all employees to have a daily temperature check before entering the workplace, may the employer maintain a log of the results?**

Yes, but the employer needs to maintain the confidentiality of this information.

- 14. May an employer disclose the name of an employee to a public health agency when it learns that the employee has COVID-19?**

Yes. The ADA permits this notification to public health authorities because COVID-19 at this time poses a direct threat both to individuals with the disease and those with whom they come into contact.

Reasonable Accommodation

- 15. Is an employer required to grant a request to telework from an employee who is 65 years old or older because the CDC says older people are more likely to experience severe symptoms if they get COVID-19?**

No. The Age Discrimination in Employment Act does not itself have an accommodation provision like the Americans with Disabilities Act. However, if an employer is allowing

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other comparable workers to telework, it should make sure it is not treating older workers differently based on their age.

16. Is an employer required to grant a request to telework from an employee who is pregnant because the CDC says women who are pregnant are at higher risk for severe illness if they contract COVID-19?

Title VII as amended by the Pregnancy Discrimination Act states that “women affected by pregnancy shall be treated the same for all employment related purposes as other persons not so affected but similar in their ability or inability to work.” Therefore, a pregnant worker should not be denied a needed adjustment that the employer provides to other employees for other reasons but who are similar in their ability or inability to work. Additionally, while pregnancy itself is not a disability under the ADA, employers can be required to provide reasonable accommodations for pregnancy-related medical conditions under the Illinois Human Rights Act.

17. If a job may only be performed at the workplace, are there reasonable accommodations for individuals with disabilities that could offer protection to an employee with a preexisting disability who is at higher risk from COVID-19?

Maybe. Low-cost solutions achieved with materials already on hand or easily obtained may be effective. If not already implemented for all employees, accommodations for those who request reduced contact with others due to a disability may include changes to the work environment such as designating one-way aisles; using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers whenever feasible per CDC guidance or other accommodations that reduce chances of exposure. Temporary job restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment may also permit an individual with a disability to perform safely the essential functions of the job while reducing exposure to others in the workplace or while commuting.

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- 18. If an employee has a preexisting mental illness or disorder that has been exacerbated by the COVID-19 pandemic, is he entitled to a reasonable accommodation?**

Maybe. As with any accommodation request, employers may ask questions to determine whether the condition is a disability, discuss with the employee how the requested accommodation would assist him and enable him to keep working, explore alternative accommodations that may effectively meet his needs, and request medical documentation if needed.

- 19. If an employee was already receiving a reasonable accommodation prior to the COVID-19 pandemic and now requests an additional or altered accommodation, must the employer provide the new accommodation?**

Maybe. The employer should discuss with the employee whether the same or a different disability is the basis for this new request and why an additional or altered accommodation is needed.

- 20. Are the circumstances of the pandemic relevant to whether a requested accommodation can be denied because it poses an undue hardship?**

Yes. In some instances, an accommodation that would not have posed an undue hardship prior to the pandemic may pose one now. An employer does not have to provide a particular reasonable accommodation if it poses an “undue hardship,” which means “significant difficulty or expense.”

Pandemic-Related Harassment

- 21. What practical tools are available to employers to reduce and address workplace harassment that may arise as a result of the COVID-19 pandemic?**

Employers can help reduce the chance of harassment by explicitly communicating to the workforce that fear of the COVID-19 pandemic should not be misdirected against individuals because of a protected characteristic, including their national origin, race, disability or other prohibited bases.

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Return to Work

22. Can an employer require returning workers to wear personal protective gear and engage in infection control practices?

Yes. An employer may require employees to wear protective gear (e.g., masks and gloves) and observe infection control practices (e.g., regular hand washing and social distancing protocols). Also, the Governor's Executive Order currently requires masks in public indoor spaces.

23. If the employer requires returning workers to wear personal protective gear and an employee asks for an accommodation for modified protective gear, must the employer grant the request.

Maybe. If an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.

24. What do we do if an employee refuses to return to work?

Attendance at work is generally considered an essential function of a position. Assuming the employee is otherwise healthy, and not qualified for leave under the FFCRA, FMLA or other leave policies, you can probably require the employee to return to work. We recommend, however, that you consult with your legal adviser. There may be circumstances where an employee would qualify for an accommodation under the ADA or other laws.

25. How do you handle an employee who has recently traveled to a COVID-19 hotspot?

You should consult the most current guidance from the CDC to determine whether the employee should self-quarantine and for how long.

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26. Can we require employees to disclose if they are moonlighting?

Yes. You are entitled to this information especially to determine if an employee is working a second job with high exposure to COVID-19.

27. Once the vaccine becomes available, can we require our employees to get the vaccine?

No.

28. When anti-body testing is available, can we require employees to have this test and provide the results?

No, because it is a medical exam and not job-related and consistent with business necessity.

29. Can we eliminate food sharing in the workplace (i.e. take out, potlucks, bagels, doughnuts, etc.) during this time?

Yes. This will prevent social gathering and possible transmission of the virus

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DOL GUIDANCE

The Families First Coronavirus Response Act (FFCRA) became effective on April 1, 2020, and provides eligible employees with two types of paid leave. Eligible employees may be entitled to up to 80 hours of paid sick leave for certain reasons relating to COVID-19. There are, however, statutory caps on the amount an employee must be paid depending on the reason for which leave is taken. In addition eligible employees who have a son or daughter whose school is closed or daycare provider is unavailable due to COVID-19 may be eligible for up to 12 weeks of expanded FMLA. The first 2 weeks of expanded FMLA are unpaid, but an employee may substitute other paid leave benefits. The remainder of the expanded FMLA is paid, up to a statutory cap.

OKGC has prepared explanatory information as well as sample policies and forms regarding the paid leave in the FFCRA. Member entities should visit [ICRMT.com](https://www.icrmt.com) for more information.

1. Does the FFCRA allow a public employer to exclude ALL employees from the emergency paid leave benefits?

No. The FFCRA only allows employers to exclude “healthcare providers” and “emergency responders” (including public works employees) from the paid leave provisions. It is important to note that the DOL regulations define which employees are considered to be healthcare providers and emergency responders. The DOL definition differs substantially from the definition of the exempted “essential employees” in the Governor’s stay-at-home order. It is not permissible for an employer to exclude all “essential employees” from the paid leave provisions of the FFCRA. It is, however, permissible to exclude healthcare providers and emergency responders.

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