

## COVID-19 COMMON EMPLOYER FAQS:

- **Is an [employer](#) required to report suspected Covid-19 cases to the CDC?**

No. Any positive test results will be reported to the proper authorities by the healthcare location.

- **Do hospitals have testing kits for Covid-19?**

Yes. However, there is not an unlimited supply. The healthcare provider will determine if an individual should be tested based on several factors including symptoms and recent activities.

- **Can an [employer](#) require an employee to be tested for Covid-19?**

No. At this time, only the healthcare provider can determine if testing of an individual is warranted.

- **Can an [employer](#) ask its employees if they are susceptible to Covid-19?**

[Employers](#) cannot ask employees if they are susceptible due to employee's health condition(s) because it may require the employee to reveal a disability, which is a violation of the Americans with Disabilities Act (ADA); however, an [employer](#) can ask an employee to disclose whether the employee has recently traveled to any locations with high levels of

Covid-19 exposure even if the travel was for personal reasons.

- **Can an employee refuse to travel for work due to Covid-19 concerns?**

It depends. The Occupational Safety and Health Administration (OSHA) allows an employee to refuse to work if the work poses a realistic and present threat. Travel to locations with no confirmed cases is not likely a realistic or present threat. However, an employee could justifiably refuse to travel to a location with high levels of Covid-19 exposure.

- **Are there any OSHA safety requirements for Covid-19?**

No. There are not any specific requirements for Covid-19, but there are OSHA standards that cover an **employer's** obligations to prevent occupational exposure to diseases such as Covid-19. Specifically, **employers** are required to provide its employees a place of employment that is free from recognized hazards that are causing or likely to cause death or serious physical harm. Click [here](#) to read the latest OSHA updates. \*\*REMINDER: **Employers** are prohibited from retaliating against employees for raising concerns about safety and health concerns.

- **Can an employee refuse to work due to Covid-19 concerns?**

Unlikely, OSHA requires four elements to be present in order for an employee to justifiably refuse to work: (1) employee asked **employer** to eliminate danger (*i.e.*, provide face mask) and **employer** refused; (2) employee refused to work based on good faith belief of danger; (3) reasonable person would agree that the employee is in real danger of death or severe harm; and (4) danger is imminent (*i.e.*, not sufficient time for OSHA to handle).

- **Can an **employer** ask an employee to stay home if the employee is exhibiting symptoms of Covid-19?**

Yes, but the **employer** should have an objective basis for determining that the employee should stay home to avoid any claims of discrimination based on age or nationality. Also, the **employer** should require the employee to seek immediate medical attention.

- **Is an **employer** required to pay an employee that does not have Covid-19 , but is staying at home and not working due to Covid-19 concerns?**

It depends. Setting aside any paid time off policies of the **employer**, hourly non-exempt employees are not required to be paid for hours not worked. However, employers must be careful about deducting from salaried employees for time off from work. If an employee works any part of a week, the employer should not deduct for time not worked to avoid any violations of the Fair Labor Standards Act (FLSA). The deductions could affect the employee's classification as an exempt employee under the

FLSA. However, if the decision to stay home is the employee's decision, then the **employer** can deduct for the time off. **\*\*REMINDER:** If an employee is not actively working, the employee may no longer be eligible under the employer's health benefits.

- **If an **employer** experiences a decline in business, can the **employer** require salaried employees to stop working and stop paying them until normal business levels resume?**

No. If a salaried employee is ready, willing, and able to work, an **employer** is not permitted to deduct from the employee's salary when work is not available.

- **Can an employee elect to take protected leave under the Family Medical Leave Act (FMLA) if the employee does not have Covid-19, but wants to take FMLA due to concerns?**

No. The FMLA does not apply to employees wanting to stay at home to avoid getting Covid-19 or any other illness.

- **If an employee does have Covid-19, can the employee take FMLA?**

Possibly. Generally, contraction of a virus (*i.e.*, flu) does not trigger the ADA and benefits such as FMLA because it is a transitory condition; however, if the employee's major life activities are limited as a result of Covid-19, then the ADA does apply and FMLA may be an option.

- **If an employee does contract Covid-19 at work, can the employee file a claim for workers' compensation?**

Unlikely. Contraction of a virus is not by itself an injury, but an employee could claim that it is an "occupational disease" and, therefore, a covered claim for workers' compensation. An "occupational disease" must arise out of and was in the course of employment and be caused by conditions peculiar to the work and creates a risk of contracting the disease in a greater degree and in a different manner than in the general public. The [Texas Health and Safety Code under section 81.050\(j\)](#) has specific employee requirements to make a workers' comp claim for communicable

diseases. **\*\*REMINDER:** To make a claim for workers' compensation, the employee must provide medical evidence to support the claim.

**\*\*This is a guide to help you make reasonable business decisions around a unique topic. Employer Flexible is here to be a partner with you while you navigate through this challenging and unique time. This guide was made possible by a business partner of ours CUBETA LAW GROUP. \*\***