

Can I have our nurse take employee temperatures to make sure they're not sick before they work? Can I require employees be tested?

Previously the answer would've been no. Now, the EEOC has stated that taking employee's temperature is fine. The EEOC has also stated its fair game to question employees about related symptoms (fever, cough, etc.). Beyond that, however, get some legal advice.

Can OSHA investigate and cite us because of coronavirus?

Yes, OSHA can inspect you for anything. They have provided guidelines of what coronavirus related investigations will look like.

What OSHA standards are important for coronavirus?

- PPE
- Job Safety Analysis
- General Duty Clause

Can our employees recover workers' compensation if they are exposed to the virus at work?

In Georgia, The Occupational Disease Exclusion requires a high standard of proof to recover from a disease contracted at work. Even if the employee can prove they were infected at work, they can't recover under GA WC for Occupational Disease Exclusion if disease is what statute defines an "ordinary disease of life to which the general public is exposed."

Employees are likely not going to receive compensation under current law in Georgia, but this could change with time.

Are we liable if we expose our employees to coronavirus?

Exclusive Remedy provisions of Workers Compensation apply if employee claims an injury from the work place.

Can we be liable to our customers?

Duty to exercise ordinary care to protect invitees (standards provided by OSHA, CDC and local authorities.) **Best Practice:** Follow CDC Guidelines for Social Distancing, Hygiene and Protection

Can I require medical testing to screen for coronavirus?

Employers can require "fitness for duty" certification, which can include verification the returning employees is not ill.

Do medical privacy rules limit what we can ask employees about their exposure to the Coronavirus?

To an extent, employer can inquire about symptoms and exposure. Employer must protect identity of those exposed to Coronavirus as much as possible.

What changes might we need to make to our workplace to comply with OSHA?

- Job Hazard Analysis to restrict transmissions
 - High, medium and low risk groups
- Infectious Disease Preparedness and Response Plan
 - Prevention
 - Active Response



If an employee has been sick, am I required to allow him to work from home as a reasonable accommodation?

Depends. For someone who has been sick and no longer sick, there is no obligation to allow them to continue to WFH. If someone is sick or has another medical condition and asking for reasonable accommodation to telecommute under ADA. Treat this as typical reasonable accommodations analysis.

Will I have to return all employees to the "same or equivalent position" under FMLA?

Yes.

How much do I have to pay an employee requesting 6 weeks off to care for her child due to schools being closed until the end of the year?

Under Family First Coronavirus Response Act, there are two new types of paid leave (Both apply to employers with fewer than 500 employees this allows 2 weeks of emergency paid sick leave):

- Emergency Paid Sick Leave Act
- Emergency Family Medical Leave Expansion Emergency Act
- Allowed paid sick leave for 2 weeks (80 hours).

What type of documentation do employers need in order to get reimbursed?

Under DOL and IRS, they expect you have:

- Name
- Date to leave requested
- Qualifying reason and name of health care provider
- Unable to work for qualifying reasons
- Child is under 18 and unable to care for themselves (name of school/daycare)
- Maintain all documentation for 4 years

What wage and hour concerns should we have with employees working remotely?

Ensure that non-exempt employees are recording and being paid for all work time. Remind employees that they should not be working "off the clock". Monitor non-exempt employee time and productivity and discuss any issues with employees.

Can we switch an employee from an exempt salaried employee to an hourly employee?

Yes, but not retroactively and the employee is entitled to overtime compensation for all time spent working over 40 hours in a workweek once the switch is made. Employer must be able to demonstrate that it is not trying to subvert the W&H laws. Clearly communicate the reason for the change and all requirements to employee- i.e., must keep track of working time like all other hourly employees.

What if we can no longer keep everyone employed?

Furloughs vs. Layoffs

Can we require employees to use PTO during a furlough?

Yes-so long as employee not receiving paid leave under FFCRA (and employer receiving payroll tax credit).

