

## Employer Safety FAQs

### ***Given COVID-19, if an employee is out of the office due to sickness, can we ask them about their symptoms?***

Yes, but there's a right way to do it and a wrong way to do it. In most circumstances, employers shouldn't ask about an employee's symptoms, as that could be construed as a disability-related inquiry. Under the circumstances, however—and in line with an employer's responsibility to provide a safe workplace—we recommend asking specifically about the symptoms of COVID-19 and making it clear that this is the extent of the information you're looking for.

Here's a suggested communication: "Thank you for staying home while sick. In the interest of keeping all employees as safe as possible, we'd like to know if you are having any of the symptoms of COVID-19. Are you experiencing a fever, cough, and/or shortness of breath?"

Remember that medical information must be kept confidential as required by the ADA. If the employee does reveal that they have symptoms of COVID-19, or has a confirmed case, you should see the CDC's Interim Guidance to determine next steps. Tables 1 and 2 will help you assess risk and determine what steps, if any, should be taken.

### ***Is it safe for my employees to keep working? How do I decide whether to keep employees working or not?***

Ultimately each company will need to determine how it will fulfill its duty to provide a safe workplace to its employees. It's very important to pay attention to federal, state, and local authorities to see if they are rolling out specific guidance or prohibitions that you need to be aware of. For example, some locations have issued an order for individuals to "shelter in place," which drastically limits what workplaces can remain open and provides some guidance for those who can remain working. We have created a guide with links to government COVID-19 resources that can be downloaded here.

COVID-19 is a breaking issue, so guidance has been changing from day to day and region to region. We recommend keeping up with the latest information on the Centers for Disease Control (CDC) Coronavirus home page, related pages on that site, and your local health department for the most up to date guidance for your region and operations.

### ***What if I have a fearful employee who refuses to come to work?***

Generally, employees do not have a right to refuse to work based only on a generalized fear of becoming ill. If their fear is not based on objective evidence of possible exposure, you can enforce your attendance policies.

You should be prepared for employees who express anxiety about coming to work and evaluate any request on a case-by-case basis. Consider alternative arrangements such as telecommuting if possible. Employees who are immunocompromised or have other relevant disabilities may be entitled to a reasonable accommodation, such as working from home or taking a leave if working from home is not possible.

If the nature of the employee's position does not allow telecommuting, and there is no legitimate threat, reiterate the steps they can take to keep themselves safe from contracting the virus and explain the proactive steps you are taking to keep infection risk low in the workplace.

### ***What if my employee tests positive for COVID-19?***

Our recommendation is to follow guidance from the Centers for Disease Control and Prevention (CDC). Employers should ask employees who test positive or live with someone confirmed to have COVID-19 to notify a designated HR representative or their supervisor as soon as possible. The employer and employee should then refer to CDC guidance to assess risk and determine next steps—see Tables 1 and 2 in the CDC's Interim US Guidance for Risk Assessment and Public Health Management.