



The New Normal:

Staying Safe Once Your Workplace Reopens

Steve Richardson, CPSI, ARM, CEAS-1

Paul Penne, JD

Disclaimer

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Please contact us at 818-449-9317.

The New Normal

- Social Distancing – Arranging offices, classrooms, and conference rooms while maintaining social distancing guidelines;
- Conducting Meetings – Steps you can take to hold meetings while minimizing risk
- Testing Positive – Preparing for the possibility of an employee testing positive for COVID-19 after your workplace has reopened

Maintaining Physical Distancing– School and Office Settings



Classrooms – Exploring seating arrangements and possible solutions to crowded classrooms.



Offices – Methods for creating space in office environments.



Conference Rooms – Ideas for distancing in conference rooms and conducting meetings

Classroom - Setup and Design

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- Observe distancing guidelines in your classroom set-up, design, and exit routes.
- Follow CDC/Local & State guidelines for physical distancing.
- Utilize Barriers/Partitions to minimize cross-traffic at classroom entry/exit points.
- Use employer provided COVID-19 signage to direct and instruct the movements of students and employees inside the classrooms.



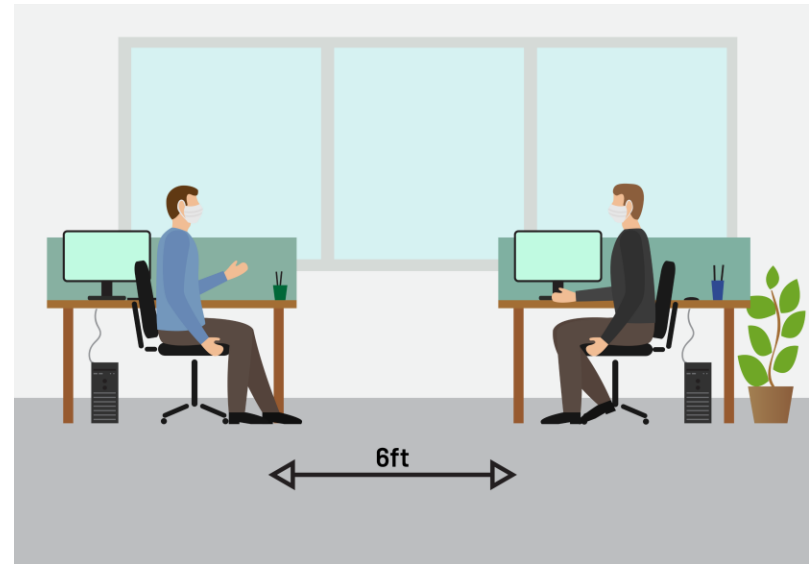
Floor Signage - Physical Distancing and Directional



Office / Reception Area - Design and Set-Up

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- Adopting an open design for workstations, and avoiding densely populated office space designs of the past
- Consider the lobby area more for COVID-19 screening, hand sanitizing, donning facecloths, and consider protecting lobby staff with the installation of plastic partitions
- Common areas like breakrooms and kitchen areas should have limited table seating, with physical distancing for equipment like coffee makers and microwaves
- Consider staggering employee work schedules to include rolling schedules (shifts), and/or alternating days in the office with days at the home office



Creating Physical Distancing at the Office Workplace

S O C I A L D I S T A N C I N G

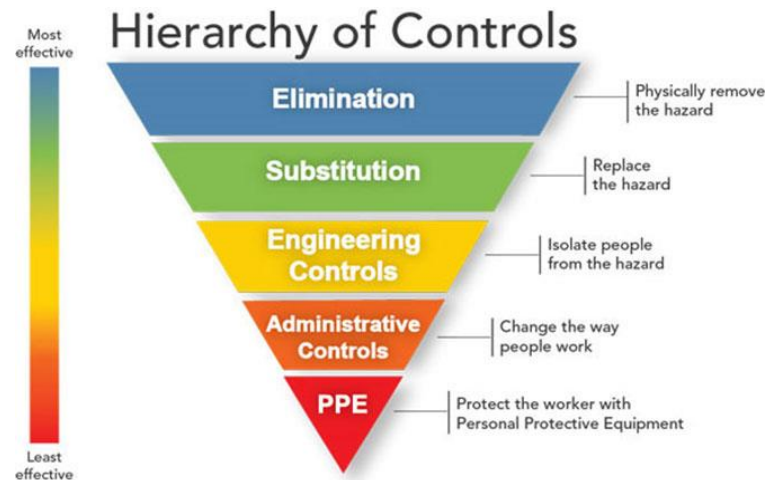


Conference Room Design & Conducting Meetings

- New Normal – Fewer in-person meetings means more video conferences. This leads us to smaller conference, meeting rooms.
- Fewer in-person attendees allow for smaller conference rooms.
- Conference rooms with fewer in-person attendees means unused chairs and tables can be removed.
- Make the decision to continue in-person meetings, video conferencing, or some version of both when you plan your meetings.

Employee Testing Positive for COVID-19

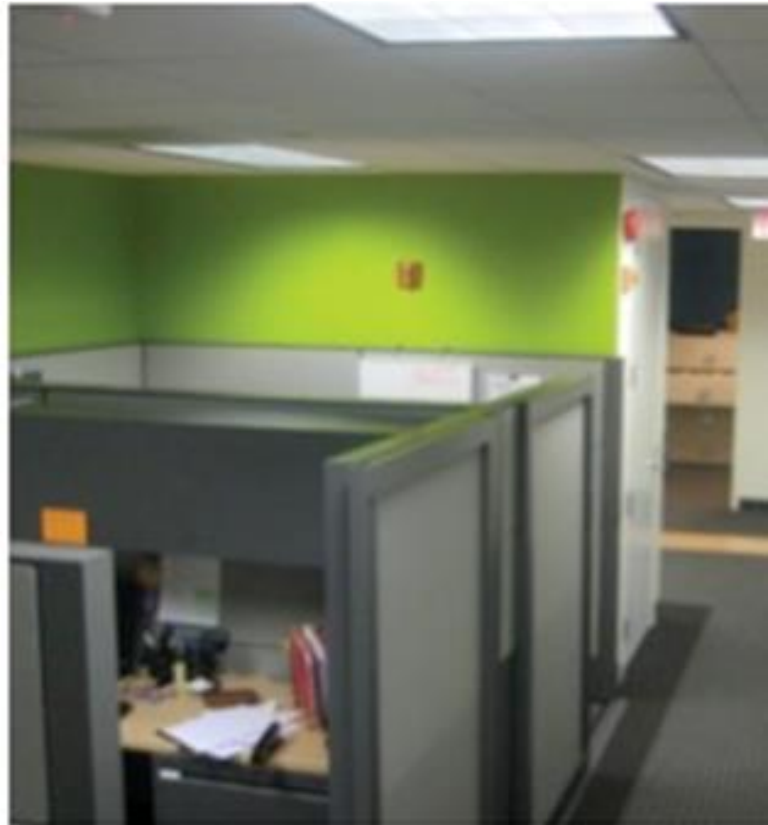
- Your workforce has returned to “normal” working in the workplace.
- You receive a phone call from an employee stating that he has been diagnosed with COVID-19



Employee Testing Positive for COVID-19

What do you do?

- Speak to the employee, find out who he has been around i.e. within 6 feet within the last two weeks.
- Coworkers, customers, vendors



Employee Testing Positive for COVID-19

- What happens if you try and contact an employee that has been diagnosed with COVID-19 and you are unable to find out who they have been in contact with in the last 14 days? What do you do now?
 - Review their actions, if they work in the office, think about who they have worked with?
 - If they have been outside, what did they do for the last 14 days, who did they see?
 - Use the CDC guidance for contact tracing.
 - <https://www.cdc.gov/coronavirus/2019-ncov/php/notification-of-exposure.html>

Employee Testing Positive for COVID-19

- What do you do if you can't truly determine who might have been exposed?
 - Do you put out a general notice to everyone?



Employee Testing Positive for COVID-19

- Now, you have a list of people, what do you do now?
- Inform those individuals that they may have been exposed to someone who has tested positive.



Employee Testing Positive for COVID-19

- What do you say to them?
 - Inform them that someone in the company has been diagnosed with COVID and that they need to seek medical treatment.
 - Questions that need answers.
 - Are they able to continue working?
 - Can they telework while they find out if they are testing positive?
 - It depends on their job.
 - What do you do if their job doesn't allow telework?

Employee Testing Positive for COVID-19

- Placing them on leave.
 - Explain the options to the employee
- Are you going to have them stay out for 14 days?



Questions

- Steve Richardson, CPSI, ARM, CEAS-1
srichardson@pomassoc.com
926-338-8417
- Paul Penne, JD
ppenne@pomsassoc.com
818-449-9447

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A Guide to Reopening Schools Plan



The following is an interim guide that School Districts may use as a tool to develop their own “Reopening Schools during COVID-19 Plan.” The guide includes areas that Districts may need to consider when reopening their schools and should not be considered an all-inclusive template. This interim guidance is based on what is currently known about the transmission and severity of coronavirus disease 2019 (COVID-19). ***Poms makes no declarations that the guide maintains compliance with any regulatory requirements.***

Purpose: Schools, working together with local Health Departments, have an important role in slowing the spread of diseases. Ensuring a healthy environment is essential. Schools serve students, staff, and visitors from throughout the community. All may have close contact in the school setting. A Leadership Statement should summarize the responsibility of reopening schools, and the importance of the students and employees in mind.

1. Responsibility

- a. Include a summary message emphasizing the importance of, and encouraging the responsibility of, all employees and management playing a positive role in the process of maintaining a safe and healthy school.
- b. Identify the key persons involved in the development, maintenance, and communication components of the program.
 1. School Board, Superintendent, HR, Legal, Risk Management, Finance, IT, and/or others as necessary
 2. Appoint a School Safety Coordinator (and at least 1 alternate) or committee who will be responsible for addressing COVID-19 issues and their impact on schools.
- c. Provide flexible timelines for program review and revision given the best practices, local jurisdictional guidance, and information as it evolves; communicate regularly and consistently with all school employees.
- d. Implement your version of the “Guide to Reopening School Plan.”
- e. Develop COVID-19 Emergency Response Procedures/Protocol for employees and students exhibiting virus symptoms, including providing quarantine and first aid rooms.
- f. Coordinate with local health officials. Once learning of a COVID-19 case in someone who has been in the school, immediately notify local health officials. These officials will help administrators determine a course of action for their childcare programs and/or schools.

2. Identify Affected Groups

- a. Students
- b. Administrators: Office Manager, Principal, Vice Principal, Receptionist, Nurse
- c. Faculty: Teachers, Teacher’s Aides, Program Assistants, Contract Teachers (Special Ed, Music, P.E., etc.)
- d. Staff: Custodians, Maintenance & Grounds Workers, Kitchen, Library Staff, Bus transit operators.

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- e. Parents/Family/Relatives: Student Pickups/Drop-offs, Parent-Teacher Conferences.
- f. Routine Visitors: Courier Deliveries, Food Service Providers, Computer/Printer repair Technicians.
- g. Occasional Visitors; Inspectors, and Local Jurisdiction Agencies (Police & Fire).
- h. General public (example: school fund raisers)
- i. Solicitors and Salespersons
- j. Interviewees/Applicants
- k. Others

3. Logistical Considerations

- a. Parking (ADA, Visitor, and Employees)
- b. Emergency Vehicle Access Routes
- c. District Buildings & Systems Management
 - 1. District Office
 - 2. Maintenance, Operations and Transportation Buildings
 - 3. District-Owned Vehicles, Equipment, Tools
 - 4. HVAC Systems
 - 5. Utility/Server Rooms
 - 6. Elevators (if applicable)
- d. Fire Systems (Alarm Panel, PIV's, Risers, Strobes, Alarm Pulls, Fire Extinguishers)
- e. School and District Office layout
 - 1. Configuration
 - 2. Engineering controls (signage, floor markings, partitions, and roped areas)
 - 3. Administrative controls (communications, policy, procedures)
 - 4. PPE Requirements
- f. Break rooms/Lunchrooms/Kitchens
 - 1. Vending Machine Use and Cleaning
 - 2. Refrigerators Use and Cleaning
 - 3. Microwaves/Coffee Makers Use and Cleaning
 - 4. Meals: encourage meals brought from home, or school provided individually plated meals. If a school event, use pre-packaged food (instead of potluck and/or buffet style).
 - 5. Stoves/Ovens - use and cleaning
 - 6. Utensils (use disposable whenever possible)
- g. Copy and Office Supply Rooms use and cleaning
- h. Classroom and Teacher Prep Room (space seating/desk 6 ft apart when feasible)

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1. Turn desks to face in the same direction (rather than facing each other), or have students sit on only one side of tables, spaced apart.
 - i. Library (space seating/desk 6 ft apart when feasible)
 - j. Multipurpose Room (space seating/desk 6 ft apart when feasible)
 - k. Outdoor Amphitheater (space seating/desk 6 ft apart when feasible)
 - l. Gymnasium (space activity participants 6 ft apart when feasible)
 - m. Swimming Pool – minimize risk (follow local agency and/or CDC recommendations)
 - n. Weight Room – minimize risk (follow local agency and/or CDC recommendations)
 - o. Mat Room – minimize risk (follow local agency and/or CDC recommendations)
 - p. Locker Rooms minimize risk (follow local agency and/or CDC recommendations)
 - q. Playground Structures - minimize risk (follow local agency and/or CDC recommendations)
 1. Close if possible; otherwise stagger use and disinfect in between use.
 - r. Playground Area - minimize risk (space activities at least 6 ft apart)
 - s. Theater (space seating 6 ft apart when feasible)
 - t. Stage area (space seating and/or desk 6 ft apart when feasible)
 - u. Nurses office (limit number of students in office at one time)
 - v. Board Room (space seating 6 ft apart when feasible)
 - w. Conference/Meeting Rooms (space seating 6 ft apart when feasible)
 - x. School Bus minimize risk (follow local agency and/or CDC recommendations)
 1. Create social distance between children (for example, seating children one child per seat, every other row) where possible.
 - y. Cafeteria/Dining Room (space seating 6 ft apart when feasible)
 1. Close if possible; otherwise stagger use and disinfect in between use.
 2. Consider serving meals in classrooms instead.
4. **Timeframe & Decisions** (maintain flexibility)
 - a. Opening Office to Staff
 1. All at once or phased in?
 2. All office personnel, or just essential personnel?
 3. Regular school bell schedule or staggered schedules?
 4. Work from home options and availability?
 5. “Opt-in” voluntary Return to Work, or Work from Home?
 - b. Opening Office to Visitors
 1. Appointment only, or walk-ins acceptable?
 2. * Establish policy for visitors which should be communicated to both employees and visitors and their employers.

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5. Procedures/Activities

- a. Medical Screening (See HR & Logistics)
 - 1. CDC Screening Protocol/Procedures
 - 2. COVID-19 Questionnaire updating as needed
 - 3. Daily Superintendent/Principal COVID-19 status communication
- b. Consider postponement of extracurricular group activities, school based After School Programs, and large events (e.g., assemblies, field trips, and sporting events).
- c. Discourage staff, students, and their families from gathering or socializing anywhere. This includes group childcare arrangements, as well as gathering at places like a friend's house, a favorite restaurant, or the local shopping mall, as directed by local health officials/CDC.

6. Communicate with Staff, Parents, and Students

- a. Identify Information Officer to employees (Principal, Superintendent, etc.)
- b. Coordinate with local health officials to communicate dismissal decisions and possible COVID-19 exposure. This type of communication to the school community should align with the communication plan in the school's Emergency Operations Plan.
- c. Include messages to counter potential stigma and discrimination of those with COVID-19.
 - 1. In such a circumstance, it is critical to maintain confidentiality of the student or staff member as required by the Americans with Disabilities Act and the Family Education Rights and Privacy Act.
- d. Developments/Procedures
 - 1. Procedures for daily school arrivals and dismissals
- e. Training Decisions on Best Practices, PPE, etc.
 - 1. Where to conduct training if physical location? (schools or District locations)
 - 2. Who receives the training? (groups, or all employees)
 - 3. How and Who conducts training? (Live or Online)

7. Cleaning/Disinfecting

- a. Exposed Areas
 - 1. Close off areas used by the individuals with COVID-19 and wait if practical before beginning cleaning and disinfection to minimize potential for exposure to respiratory droplets.
 - 2. Open outside doors and windows to increase air circulation in the area. If possible, wait up to 24 hours before beginning cleaning and disinfection.
- b. Personal Hygiene
 - 1. Self-cleaning opportunities by all employees and students
 - 2. Types of products available and locations
 - i. Disinfectant Wipes & Tissues
 - ii. Cloth Face Coverings (if feasible)
 - iii. Gloves and Hair Nets for Kitchen Staff

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- iv. Soap & Hand Sanitizers (at least 60% Alcohol)
- v. Hand Drying Capability (Paper Towels and/or Air Blowers)
- vi. No-Touch Foot Pedal Trash Receptacles

8. Continuity of Education & Meal Programs

- a. Ensure continuity of education with Continuity Plans, including plans for the continuity of teaching and learning. Implement e-learning Plans, including digital and distance learning options as feasible and appropriate. Ensure continuity of meal service and delivery programs.
- b. Determine, in consultation with School District officials and/or other state or local partners:
 - 1. If a waiver is needed for state requirements of a minimum number of in-person instructional hours or school days (seat time) as a condition for funding.
 - 2. How to convert face-to-face lessons into online lessons and how to train teachers for online lessons.
 - 3. How to triage technical issues if faced with limited IT support and staff.
 - 4. How to encourage appropriate adult supervision while children are using distance learning approaches.
 - 5. How to deal with the potential lack of students' access to computers and the Internet at home.
 - 6. Consider ways to distribute food to students, if applicable.

9. Human Resources

- a. Health & Wellness
 - 1. Personal hygiene
 - 2. Handling Symptomatic Students and Employees
 - 1. Define symptoms and establish baselines
 - 2. What if a student and/or employee has a "regular" cold or allergies?
 - 3. Prepare mental/emotional support for students/staff
- b. Programs & Policy
 - 1. Update/accessible Injury and Illness Prevention Plan
 - 2. Review and update Workers Compensation Plan
- c. Screening Employees & Students
 - 1. Questionnaires
 - 2. Temperature checks (Medical Exams)
 - 3. Screening and/or isolation Rooms
 - 4. Frequency
 - 5. Privacy
 - 6. If/When to Require Doctor's Notes
- d. Have a plan for when a staff member, child, or visitor becomes sick

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- e. Have a procedure to handling complaints
- f. Identify vulnerable students and employees
- g. Privacy concerns
- h. Leave Policies
- i. Records Retention

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What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws

Technical Assistance Questions and Answers - Updated on June 11, 2020

- All EEOC materials related to COVID-19 are collected at www.eeoc.gov/coronavirus.
- The EEOC enforces workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act (which include the requirement for reasonable accommodation and non-discrimination based on disability, and rules about employer medical examinations and inquiries), Title VII of the Civil Rights Act (which prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy), the Age Discrimination in Employment Act (which prohibits discrimination based on age, 40 or older), and the Genetic Information Nondiscrimination Act. Note: Other federal laws, as well as state or local laws, may provide employees with additional protections.
- Title I of the ADA applies to private employers with 15 or more employees. It also applies to state and local government employers, employment agencies, and labor unions. All nondiscrimination standards under Title I of the ADA also apply to federal agencies under Section 501 of the Rehabilitation Act.
- The EEO laws, including the ADA and Rehabilitation Act, continue to apply during the time of the COVID-19 pandemic, but they do not interfere with or prevent employers from following the [guidelines and suggestions made by the CDC or state/local public health authorities](#) about steps employers should take regarding COVID-19. **Employers should remember that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety.**

- The EEOC has provided guidance (a publication entitled [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act \[PDF version\]](#)), consistent with these workplace protections and rules, that can help employers implement strategies to navigate the impact of COVID-19 in the workplace. This pandemic publication, which was written during the prior H1N1 outbreak, is still relevant today and identifies established ADA and Rehabilitation Act principles to answer questions frequently asked about the workplace during a pandemic. It has been updated as of March 19, 2020 to address examples and information regarding COVID-19; **the new 2020 information appears in bold and is marked with an asterisk.**
- The World Health Organization (WHO) has declared COVID-19 to be an international pandemic. The EEOC pandemic publication includes a [separate section](#) that answers common employer questions about what to do after a pandemic has been declared. Applying these principles to the COVID-19 pandemic, the following may be useful:

A. Disability-Related Inquiries and Medical Exams

A.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?](#)

(3/17/20)

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

A.2. **When screening employees entering the workplace during this time, may an employer only ask employees about the COVID-19 symptoms EEOC has identified as [examples](#), or may it ask about any symptoms identified by public health authorities as associated with COVID-19?** (4/9/20)

As public health authorities and doctors learn more about COVID-19, they may expand the list of associated symptoms. Employers should rely on the CDC, other public health authorities, and reputable medical sources for guidance on emerging symptoms associated with the disease. These sources may guide employers when choosing questions to ask

employees to determine whether they would pose a direct threat to health in the workplace. For example, additional symptoms beyond fever or cough may include new loss of smell or taste as well as gastrointestinal problems, such as nausea, diarrhea, and vomiting.

A.3. When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic? (3/17/20)

Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

A.4. Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19? (3/17/20)

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

A.5. When employees return to work, does the ADA allow employers to require a doctor's note certifying fitness for duty? (3/17/20)

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after 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.

A.6. 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? (4/23/20)

The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” Applying this standard to the 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.

Consistent with the ADA standard, employers should ensure that the tests are accurate and reliable. For example, employers may review [guidance](#) from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities, and check for updates. Employers may wish to consider the incidence of false-positives or false-negatives associated with a particular test. Finally, note that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

Based on guidance from medical and public health authorities, employers should still require – to the greatest extent possible – that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

B. Confidentiality of Medical Information

B.1. May an employer store in existing medical files information it obtains related to COVID-19, including the results of taking an employee's temperature or the employee's self-identification as having this disease, or must the employer create a new medical file system solely for this information? (4/9/20)

The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file, thus limiting access to this [confidential information](#). 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.

B.2. 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? (4/9/20)

Yes. The employer needs to maintain the confidentiality of this information.

B.3. May an employer disclose the name of an employee to a public health agency when it learns that the employee has COVID-19? (4/9/20)

Yes.

B.4. May a temporary staffing agency or a contractor that places an employee in an employer's workplace notify the employer if it learns the employee has COVID-19?

(4/9/20)

Yes. The staffing agency or contractor may notify the employer and disclose the name of the employee, because the employer may need to determine if this employee had contact with anyone in the workplace.

C. Hiring and Onboarding

C.1. If an employer is hiring, may it screen applicants for symptoms of COVID-19?

(3/18/20)

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.

C.2. May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam? (3/18/20)

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

C.3. May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it? (3/18/20)

Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

C.4. May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it? (3/18/20)

Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

C.5. May an employer postpone the start date or withdraw a job offer because the individual is 65 years old or pregnant, both of which place them at higher risk from COVID-19? (4/9/20)

No. The fact that the CDC has identified those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a job offer. However, an employer may choose to allow telework or to discuss with these individuals if they would like to postpone the start date.

D. Reasonable Accommodation

In discussing accommodation requests, employers and employees may find it helpful to consult the Job Accommodation Network (JAN) website for types of accommodations, www.askjan.org. JAN's materials specific to COVID-19 are at <https://askjan.org/topics/COVID-19.cfm>.

D.1. If a job may only be performed at the workplace, are there [reasonable accommodations](#) for individuals with disabilities, absent [undue hardship](#), that could offer protection to an employee who, due to a preexisting disability, is at higher risk from COVID-19? (4/9/20)

There may be reasonable accommodations that could offer protection to an individual whose disability puts him at greater risk from COVID-19 and who therefore requests such actions to eliminate possible exposure. Even with the constraints imposed by a pandemic, some accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer.

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.

Flexibility by employers and employees is important in determining if some accommodation is possible in the circumstances. 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.

D.2. If an employee has a preexisting mental illness or disorder that has been exacerbated by the COVID-19 pandemic, may he now be entitled to a reasonable accommodation (absent undue hardship)? (4/9/20)

Although many people feel significant stress due to the COVID-19 pandemic, employees with certain preexisting mental health conditions, for example, anxiety disorder, obsessive-compulsive disorder, or post-traumatic stress disorder, may have more difficulty handling the disruption to daily life that has accompanied the COVID-19 pandemic.

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.

D.3. In a workplace where all employees are required to telework during this time, should an employer postpone discussing a request from an employee with a disability for an accommodation that will not be needed until he returns to the workplace when mandatory telework ends? (4/9/20)

Not necessarily. An employer may give higher priority to discussing requests for reasonable accommodations that are needed while teleworking, but the employer may begin discussing this request now. The employer may be able to acquire all the information it needs to make a decision. If a reasonable accommodation is granted, the employer also may be able to make some arrangements for the accommodation in advance.

D.4. What if an employee was already receiving a reasonable accommodation prior to the COVID-19 pandemic and now requests an additional or altered accommodation? (4/9/20)

An employee who was already receiving a reasonable accommodation prior to the COVID-19 pandemic may be entitled to an additional or altered accommodation, absent undue hardship. For example, an employee who is teleworking because of the pandemic may need a different type of accommodation than what he [uses in the workplace](#). The employer [may 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.

D.5. During the pandemic, if an employee requests an accommodation for a medical condition either at home or in the workplace, may an employer still request information to determine if the condition is a disability? (4/17/20)

Yes, if it is not obvious or already known, an employer may ask questions or request medical documentation to determine whether the employee has a "disability" as defined by the ADA (a physical or mental impairment that substantially limits a major life activity, or a history of a substantially limiting impairment).

D.6. During the pandemic, may an employer still engage in the interactive process and request information from an employee about why an accommodation is needed? (4/17/20)

Yes, if it is not obvious or already known, an employer may ask questions or request [medical documentation](#) to determine whether the employee's disability necessitates an accommodation, either the one he requested or any other. [Possible questions](#) for the employee may include: (1) how the disability creates a limitation, (2) how the requested accommodation will effectively address the limitation, (3) whether another form of accommodation could effectively address the issue, and (4) how a proposed accommodation will enable the employee to continue performing the "essential functions" of his position (that is, the fundamental job duties).

D.7. If there is some urgency to providing an accommodation, or the employer has limited time available to discuss the request during the pandemic, may an employer provide a temporary accommodation? (4/17/20)

Yes. Given the pandemic, some employers may choose to forgo or shorten the exchange of information between an employer and employee known as the "interactive process" (discussed in D.5 and D.6., above) and grant the request. In addition, when government restrictions change, or are partially or fully lifted, the need for accommodations may also change. This may result in more requests for short-term accommodations. Employers may wish to adapt the interactive process - and devise end dates for the accommodation - to suit changing circumstances based on public health directives.

Whatever the reason for shortening or adapting the interactive process, an employer may also choose to place an end date on the accommodation (for example, either a specific date such as May 30, or when the employee returns to the workplace part- or full-time due to changes in government restrictions limiting the number of people who may congregate).

Employers may also opt to provide a requested accommodation on an interim or trial basis, with an end date, while awaiting receipt of medical documentation. Choosing one of these alternatives may be particularly helpful where the requested accommodation would provide protection that an employee may need because of a pre-existing disability that puts her at greater risk during this pandemic. This [could also apply](#) to employees who have disabilities exacerbated by the pandemic.

Employees may request an extension that an employer must consider, particularly if current government restrictions are extended or new ones adopted.

D.8. May an employer ask employees now if they will need reasonable accommodations in the future when they are permitted to return to the workplace? (4/17/20)

Yes. Employers may ask employees with disabilities to request accommodations that they believe they may need when the workplace re-opens. Employers may begin the "interactive process" - the discussion between the employer and employee focused on whether the impairment is a disability and the reasons that an accommodation is needed.

D.9. Are the circumstances of the pandemic relevant to whether a requested accommodation can be denied because it poses an undue hardship? (4/17/20)

Yes. An employer does not have to provide a particular reasonable accommodation if it poses an "[undue hardship](#)," which means "significant difficulty or expense." As described in the two questions that follow, in some instances, an accommodation that would not have posed an undue hardship prior to the pandemic may pose one now.

D.10. What types of undue hardship considerations may be relevant to determine if a requested accommodation poses "significant difficulty" during the COVID-19 pandemic? (4/17/20)

An employer may consider whether current circumstances create "significant difficulty" in acquiring or providing certain accommodations, considering the facts of the particular job and workplace. For example, it may be significantly more difficult in this pandemic to conduct a needs assessment or to acquire certain items, and delivery may be impacted, particularly for employees who may be teleworking. Or, it may be significantly more difficult to provide employees with temporary assignments, to remove marginal functions, or to readily hire temporary workers for specialized positions. If a particular accommodation

poses an undue hardship, employers and employees should work together to determine if there may be an alternative that could be provided that does not pose such problems.

D.11. What types of undue hardship considerations may be relevant to determine if a requested accommodation poses "significant expense" during the COVID-19 pandemic?

(4/17/20)

Prior to the COVID-19 pandemic, most accommodations did not pose a significant expense when considered against an employer's overall budget and resources (always considering the budget/resources of the entire entity and not just its components). But, the sudden loss of some or all of an employer's income stream because of this pandemic is a relevant consideration. Also relevant is the amount of discretionary funds available at this time - when considering other expenses - and whether there is an expected date that current restrictions on an employer's operations will be lifted (or new restrictions will be added or substituted). These considerations do not mean that an employer can reject any accommodation that costs money; an employer must weigh the cost of an accommodation against its current budget while taking into account constraints created by this pandemic. For example, even under current circumstances, there may be many no-cost or very low-cost accommodations.

D.12. Do the ADA and the Rehabilitation Act apply to applicants or employees who are classified as “[critical infrastructure workers](#)” or “[essential critical workers](#)” by the CDC? *(4/23/20)*

Yes. These CDC designations, or any other designations of certain employees, do not eliminate coverage under the ADA or the Rehabilitation Act, or any other equal employment opportunity law. Therefore, employers receiving requests for reasonable accommodation under the ADA or the Rehabilitation Act from employees falling in these categories of jobs must accept and process the requests as they would for any other employee. Whether the request is granted will depend on whether the worker is an individual with a disability, and whether there is a reasonable accommodation that can be provided absent undue hardship.

D.13. Is an employee entitled to an accommodation under the ADA in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition? *(6/11/20)*

No. Although the ADA prohibits discrimination based on association with an individual with a disability, that protection is limited to disparate treatment or harassment. The ADA does

not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.

For example, an employee without a disability is not entitled under the ADA to telework as an accommodation in order to protect a family member with a disability from potential COVID-19 exposure.

Of course, an employer is free to provide such flexibilities if it chooses to do so. An employer choosing to offer additional flexibilities beyond what the law requires should be careful not to engage in disparate treatment on a protected EEO basis.

E. Pandemic-Related Harassment Due to National Origin, Race, or Other Protected Characteristics

E.1. What practical tools are available to employers to reduce and address workplace harassment that may arise as a result of the COVID-19 pandemic? (4/9/20)

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](#), or other prohibited bases.

Practical anti-harassment tools provided by the EEOC for small businesses can be found [here](#):

- Anti-harassment [policy tips](#) for small businesses
- Select Task Force on the Study of Harassment in the Workplace (includes detailed recommendations and tools to aid in designing effective anti-harassment policies; developing training curricula; implementing complaint, reporting, and investigation procedures; creating an organizational culture in which harassment is not tolerated):
 - [report](#);
 - [checklists](#) for employers who want to reduce and address harassment in the workplace; and,
 - [chart](#) of risk factors that lead to harassment and appropriate responses.

E.2. Are there steps an employer should take to address possible harassment and discrimination against coworkers when it re-opens the workplace? (4/17/20)

Yes. An employer may remind all employees that it is against the federal EEO laws to harass or otherwise discriminate against coworkers based on race, national origin, color, sex, religion, age (40 or over), disability, or genetic information. It may be particularly helpful for employers to advise supervisors and managers of their roles in watching for, stopping, and reporting any harassment or other discrimination. An employer may also make clear that it will immediately review any allegations of harassment or discrimination and take appropriate action.

E.3. How may employers respond to pandemic-related harassment, in particular against employees who are or are perceived to be Asian? (6/11/20)

Managers should be alert to demeaning, derogatory, or hostile remarks directed to employees who are or are perceived to be of Chinese or other Asian national origin, including about the coronavirus or its origins.

All employers covered by Title VII should ensure that management understands in advance how to recognize such harassment. Harassment may occur using electronic communication tools – regardless of whether employees are in the workplace, teleworking, or on leave – and also in person between employees at the worksite. Harassment of employees at the worksite may also originate with contractors, customers or clients, or, for example, with patients or their family members at health care facilities, assisted living facilities, and nursing homes. Managers should know their legal obligations and be [instructed](#) to quickly identify and resolve potential problems, before they rise to the level of unlawful discrimination.

Employers may choose to send a reminder to the entire workforce noting Title VII's prohibitions on harassment, reminding employees that harassment will not be tolerated, and inviting anyone who experiences or witnesses workplace harassment to report it to management. Employers may remind employees that harassment can result in disciplinary action up to and including termination.

E.4. An employer learns that an employee who is teleworking due to the pandemic is sending harassing emails to another worker. What actions should the employer take? (6/11/20)

The employer should take the same actions it would take if the employee was in the workplace. Employees may not harass other employees through, for example, emails, calls, or platforms for video or chat communication and collaboration.

F. Furloughs and Layoffs

F.1. Under the EEOC's laws, what waiver responsibilities apply when an employer is conducting layoffs? (4/9/20)

Special rules apply when an employer is offering employees severance packages in exchange for a general release of all discrimination claims against the employer. More information is available in EEOC's [technical assistance document on severance agreements](#).

G. Return to Work

G.1. As government stay-at-home orders and other restrictions are modified or lifted in your area, how will employers know what steps they can take consistent with the ADA to screen employees for COVID-19 when entering the workplace? (4/17/20)

The ADA permits employers to make disability-related inquiries and conduct medical exams if job-related and consistent with business necessity. Inquiries and reliable medical exams meet this standard if it is necessary to exclude employees with a medical condition that would pose a direct threat to health or safety.

Direct threat is to be determined based on the best available objective medical evidence. The guidance from CDC or other public health authorities is such evidence. Therefore, employers will be acting consistent with the ADA as long as any screening implemented is consistent with advice from the CDC and public health authorities for that type of workplace at that time.

For example, this may include continuing to take temperatures and asking questions about symptoms (or require self-reporting) **of all those entering the workplace**. Similarly, the CDC recently posted [information](#) on return by certain types of critical workers.

Employers should make sure not to engage in unlawful disparate treatment based on protected characteristics in decisions related to screening and exclusion.

G.2. An employer requires returning workers to wear personal protective gear and engage in infection control practices. Some employees ask for accommodations due to a need for modified protective gear. Must an employer grant these requests? (4/17/20)

An employer may require employees to wear [protective gear](#) (for example, masks and gloves) and observe [infection control practices](#) (for example, regular hand washing and social distancing protocols).

However, where 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.

G.3. What does an employee need to do in order to request reasonable accommodation from her employer because she has one of the [medical conditions](#) that CDC says may put her at higher risk for severe illness from COVID-19? (5/5/20)

An employee – or a third party, such as an employee's doctor – must [let the employer know](#) that she needs a change for a reason related to a medical condition (here, the underlying condition). Individuals may request accommodation in conversation or in writing. While the employee (or third party) does not need to use the term “reasonable accommodation” or reference the ADA, she may do so.

The employee or her representative should communicate that she has a medical condition that necessitates a change to meet a medical need. After receiving a request, the employer may [ask questions or seek medical documentation](#) to help decide if the individual has a disability and if there is a reasonable accommodation, barring [undue hardship](#), that can be provided.

G.4. The CDC identifies a number of medical conditions that might place individuals at [“higher risk for severe illness”](#) if they get COVID-19. An employer knows that an employee has one of these conditions and is concerned that his health will be jeopardized upon returning to the workplace, but the employee has not requested accommodation. How does the ADA apply to this situation? (5/7/20)

First, if the employee does not request a reasonable accommodation, the ADA does not mandate that the employer take action.

If the employer is concerned about the employee's health being jeopardized upon returning to the workplace, the ADA does not allow the employer to exclude the employee – or take any other adverse action – *solely* because the employee has a disability that the CDC identifies as potentially placing him at “higher risk for severe illness” if he gets COVID-19. Under the ADA, such action is not allowed unless the employee's disability poses a “direct threat” to his health that cannot be eliminated or reduced by reasonable accommodation.

The ADA direct threat requirement is a high standard. As an affirmative defense, direct threat requires an employer to show that the individual has a disability that poses a “significant risk of substantial harm” to his own health under [29 C.F.R. section 1630.2\(r\)](#) (regulation addressing direct threat to health or safety of self or others). A direct threat assessment cannot be based solely on the condition being on the CDC's list; the determination must be an individualized assessment based on a reasonable medical judgment about this employee's disability – not the disability in general – using the most current medical knowledge and/or on the best available objective evidence. The ADA regulation requires an employer to consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. Analysis of these factors will likely include considerations based on the severity of the pandemic in a particular area and the employee's own health (for example, is the employee's disability well-controlled), and his particular job duties. A determination of direct threat also would include the likelihood that an individual will be exposed to the virus at the worksite. Measures that an employer may be taking in general to protect all workers, such as mandatory social distancing, also would be relevant.

Even if an employer determines that an employee's disability poses a direct threat to his own health, the employer still cannot exclude the employee from the workplace – or take any other adverse action – unless there is no way to provide a reasonable accommodation (absent undue hardship). The ADA regulations require an employer to consider whether there are reasonable accommodations that would eliminate or reduce the risk so that it would be safe for the employee to return to the workplace while still permitting performance of essential functions. This can involve an interactive process with the employee. If there are not accommodations that permit this, then an employer must consider accommodations such as telework, leave, or reassignment (perhaps to a different job in a place where it may be safer for the employee to work or that permits telework). An employer may only bar an

employee from the workplace if, after going through all these steps, the facts support the conclusion that the employee poses a significant risk of substantial harm to himself that cannot be reduced or eliminated by reasonable accommodation.

G.5. What are examples of accommodation that, absent undue hardship, may eliminate (or reduce to an acceptable level) a direct threat to self? (5/5/20)

[Accommodations](#) may include additional or enhanced protective gowns, masks, gloves, or other gear beyond what the employer may generally provide to employees returning to its workplace. Accommodations also may include additional or enhanced protective measures, for example, erecting a barrier that provides separation between an employee with a disability and coworkers/the public or increasing the space between an employee with a disability and others. Another possible reasonable accommodation may be elimination or substitution of particular “marginal” functions (less critical or incidental job duties as distinguished from the “essential” functions of a particular position). In addition, accommodations may include temporary modification of work schedules (if that decreases contact with coworkers and/or the public when on duty or commuting) or moving the location of where one performs work (for example, moving a person to the end of a production line rather than in the middle of it if that provides more social distancing).

These are only a few ideas. Identifying an effective accommodation depends, among other things, on an employee’s job duties and the design of the workspace. An employer and employee should discuss possible ideas; the Job Accommodation Network (www.askjan.org) also may be able to assist in helping identify possible accommodations. As with all discussions of reasonable accommodation during this pandemic, employers and employees are encouraged to be creative and flexible.

G.6. As a best practice, and in advance of having some or all employees return to the workplace, are there ways for an employer to invite employees to request flexibility in work arrangements? (6/11/20)

Yes. The ADA and the Rehabilitation Act permit employers to make information available in advance to **all** employees about who to contact – if they wish – to request accommodation for a disability that they may need upon return to the workplace, even if no date has been announced for their return. If requests are received in advance, the employer may begin the [interactive process](#). An employer may choose to include in such a notice all the CDC-listed medical conditions that may place people at higher risk of serious illness if they contract COVID-19, provide instructions about who to contact, and explain that the employer is willing

to consider on a case-by-case basis any requests from employees who have these or other medical conditions.

An employer also may send a general notice to all employees who are designated for returning to the workplace, noting that the employer is willing to consider requests for accommodation or flexibilities on an individualized basis. The employer should specify if the contacts differ depending on the reason for the request – for example, if the office or person to contact is different for employees with disabilities or pregnant workers than for employees whose request is based on age or child-care responsibilities.

Either approach is consistent with the ADEA, the ADA, and the May 29, 2020 [CDC guidance](#) that emphasizes the importance of employers providing accommodations or flexibilities to employees who, due to age or certain medical conditions, are at higher risk for severe illness.

Regardless of the approach, however, employers should ensure that whoever receives inquiries knows how to handle them consistent with the different federal employment nondiscrimination laws that may apply, for instance, with respect to accommodations due to a medical condition, a religious belief, or pregnancy.

G.7. What should an employer do if an employee entering the worksite requests an alternative method of screening due to a medical condition? (6/11/20)

This is a request for reasonable accommodation, and an employer should proceed as it would for any other request for accommodation under the ADA or the Rehabilitation Act. If the requested change is easy to provide and inexpensive, the employer might voluntarily choose to make it available to anyone who asks, without going through an interactive process. Alternatively, if the disability is not obvious or already known, an employer may ask the employee for information to establish that the condition is a [disability](#) and what specific limitations require an accommodation. If necessary, an employer also may request medical documentation to support the employee's request, and then determine if that accommodation or an alternative effective accommodation can be provided, absent undue hardship.

Similarly, if an employee requested an alternative method of screening as a religious accommodation, the employer should determine if accommodation is [available under Title VII](#).

H. Age

H.1. The [CDC has explained](#) that individuals age 65 and over are at higher risk for a severe case of COVID-19 if they contract the virus and therefore has encouraged employers to offer maximum flexibilities to this group. Do employees age 65 and over have protections under the federal employment discrimination laws? (6/11/20)

The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination against individuals age 40 and older. The ADEA would prohibit a covered employer from involuntarily excluding an individual from the workplace based on his or her being 65 or older, even if the employer acted for benevolent reasons such as protecting the employee due to higher risk of severe illness from COVID-19.

Unlike the ADA, the ADEA does not include a right to reasonable accommodation for older workers due to age. However, employers are free to provide flexibility to workers age 65 and older; the ADEA does not prohibit this, even if it results in younger workers ages 40-64 being treated less favorably based on age in comparison.

Workers age 65 and older also may have medical conditions that bring them under the protection of the ADA as individuals with disabilities. As such, they may request reasonable [accommodation for their disability](#) as opposed to their age.

I. Caregivers/Family Responsibilities

I.1. If an employer provides telework, modified schedules, or other benefits to employees with school-age children due to school closures or distance learning during the pandemic, are there sex discrimination considerations? (6/11/20)

Employers may provide any flexibilities as long as they are not treating employees differently based on sex or other EEO-protected characteristics. For example, under Title VII, female employees cannot be given more favorable treatment than male employees because of a gender-based assumption about who may have [caretaking responsibilities](#) for children.

J. Pregnancy

J.1. Due to the pandemic, may an employer exclude an employee from the workplace involuntarily [due to pregnancy](#)? (6/11/20)

No. Sex discrimination under Title VII of the Civil Rights Act includes discrimination based on pregnancy. Even if motivated by benevolent concern, an employer is not permitted to single out workers on the basis of pregnancy for adverse employment actions, including involuntary leave, layoff, or furlough.

J.2. Is there a right to accommodation based on pregnancy during the pandemic? (6/11/20)

There are two federal employment discrimination laws that may trigger [accommodation for employees based on pregnancy](#).

First, pregnancy-related medical conditions may themselves be disabilities under the ADA, even though pregnancy itself is not an ADA disability. If an employee makes a request for reasonable accommodation due to a pregnancy-related medical condition, the employer must consider it under the usual ADA rules.

Second, Title VII as amended by the Pregnancy Discrimination Act specifically requires that women affected by pregnancy, childbirth, and related medical conditions be treated the same as others who are similar in their ability or inability to work. This means that a pregnant employee may be entitled to job modifications, including telework, changes to work schedules or assignments, and leave to the extent provided for other employees who are similar in their ability or inability to work. Employers should ensure that supervisors, managers, and human resources personnel know how to handle such requests to avoid disparate treatment in violation of Title VII.

DFEH Employment Information on COVID-19



FAQ

A pandemic of respiratory illness caused by a new coronavirus (COVID-19) has been identified in California and the United States. A state of emergency has been declared by Governor Newsom in California.

Workers and employers should review their own health and safety procedures (including [Cal/OSHA workplace safety guidance](#)) to help prevent exposure to the virus and also to uphold civil rights protections to ensure discrimination does not occur in the workplace. California civil rights laws prohibit discrimination and harassment in employment, including during a pandemic.

During a pandemic, employers should rely on the latest public health recommendations from the [Centers for Disease Control and Prevention \(CDC\)](#), as well as state and local public health authorities. DFEH recognizes that public health recommendations may change during a crisis and differ between jurisdictions. Employers are expected to make their best efforts to obtain public health advice that is current and appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information.

Employers must comply with public health orders issued under the authority of a federal, state, or local entity. Such orders may place restrictions on a person's or group's activities, including movement restrictions or a requirement for monitoring by a public health authority. Federal, state, or local public health orders may be issued to enforce isolation, quarantine, or conditional release.

■ DFEH Employment Information on COVID-19

■ **The law prohibits all discrimination and harassment against employees because of race or national origin at all times.**

It is unlawful under the Fair Employment and Housing Act for an employer to discriminate against or treat an employee less favorably than another employee because of the employee's race or national origin. National origin includes geographic places of origin, ethnic groups, and tribal affiliations. For example, it is unlawful for an employer to refuse to hire, segregate, or send employees home because of their actual or perceived race or national origin, or because of their association (including marriage or co-habitation) with someone based on race or national origin. Harassment based on race or national origin is always unlawful. Employers must take reasonable steps to prevent and promptly correct discriminatory and harassing conduct in the workplace.

■ **May an employer send employees home if they display COVID-19 symptoms?**

Yes. The CDC states that employees who become ill with symptoms of the COVID-19 illness at work should leave the workplace. Employers may ask employees who exhibit COVID-19 symptoms to go home. Employers must provide paid sick leave and compensate the employee under paid sick leave laws. If sick leave is exhausted, employees may be entitled to other paid leave (including vacation or paid time off), or job-protected unpaid leave.

■ **During a pandemic, how much information may an employer request from employees who report feeling ill at work?**

Employers may ask employees if they are experiencing COVID-19 symptoms, such as fever or chills and a cough or sore throat. Employers must maintain all information about employee illness as a confidential medical record.

■ **During a pandemic, may an employer take employees' temperatures to determine whether they have a fever?**

Generally, measuring an employee's body temperature is a medical examination that may only be performed under limited circumstances. However, based on current CDC and local public health information and guidance, employers may measure employees' body temperature for the limited purpose of evaluating the risk that employee's presence poses to others in the workplace as a result of the COVID-19 pandemic.

■ **During a pandemic, may an employer ask employees why they have been absent from work if the employer suspects it is for a medical reason?**

Yes. Asking why an individual did not report to work is not a disability-related inquiry. An employer is entitled to ask why an employee has not reported for work. If an employee discloses an illness or medically-related reason for absence, employers must maintain that information as a confidential medical record.

■ DFEH Employment Information on COVID-19

■ **What information may an employer reveal if an employee is quarantined, tests positive for COVID-19, or has come in contact with someone who has the virus?**

Employers should not identify any such employees by name in the workplace to ensure compliance with privacy laws. If an employee tests positive for or is suspected to have COVID-19, the employer will need to follow the most current local, state, or federal public health recommendations. Employers should take further steps at the direction of the local public health department that may include closing the worksite, deep cleaning, and permitting or requiring telework.

Employers may notify affected employees in a way that does not reveal the personal health-related information of an employee. For example, the employer could speak with employees or send an email or other written communication stating : “[Employer] has learned that an employee at [office location] tested positive for the COVID-19 virus. The employee received positive results of this test on [date]. This email is to notify you that you have potentially been exposed to COVID-19 and you should contact your local public health department for guidance and any possible actions to take based on individual circumstances.”

Employers may not confirm the health status of employees or communicate about employees’ health.

■ **During a pandemic, may an employer require its employees to wear personal protective equipment (e.g., face masks, gloves, or gowns) designed to reduce the transmission of pandemic infection?**

Yes. An employer may require employees to wear personal protective equipment during a pandemic. However, where an employee with a disability needs a related reasonable accommodation (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

■ **Are employees entitled to job-protected unpaid leave under the California Family Rights Act (CFRA) if they cannot work because they are ill because of COVID-19 or must care for a family member who is ill?**

Employees may be entitled to up to 12 weeks of job-protected leave under the California Family Rights Act for their own serious health condition, or to care for a spouse, parent, or dependent child with a serious health condition.

COVID-19 will qualify as a serious health condition if it results in inpatient care or continuing treatment or supervision by a health care provider. It may also qualify as a serious health condition if it leads to conditions such as pneumonia.

Employees are eligible for this form of job-protected leave (CFRA) if they work for an employer with at least 50 employees within 75 miles of their worksite; have worked there for at least a year; and have worked at least 1250 hours in the year before they need time off.

■ DFEH Employment Information on COVID-19

■ **If an employee requests leave under the California Family Rights Act because of COVID-19, what kind of certification from a health care professional is appropriate in a pandemic?**

Generally, employees are expected to give employers notice as soon as practicable when they request CFRA leave because of their or a family members' serious health condition. Employers may require a medical certification of the serious health condition from a health care provider within 15 days of the employee's request, unless it is not practicable for the employee to do so.

In the context of a pandemic, it is not typically practicable for employees to provide advance notice of the need for leave (when that need is related to the pandemic), or for employees to obtain certifications when health care providers are working to address urgent patient needs. In a pandemic, employers must use their judgment and recommendations from public health officials to waive certification requirements when considering and granting leave requests.

■ **Are employees who are not eligible for CFRA leave still entitled to accommodation if they cannot come to work because of illness related to COVID-19?**

Maybe. All employers of five or more employees are required to provide reasonable accommodation to employees with disabilities unless doing so would impose an undue hardship. Telework is a familiar form of accommodation. Unpaid leave can also be a form of reasonable accommodation, even when employees are not entitled to CFRA leave. Whether illness related to COVID-19 rises to the level of a disability (as opposed to a typical seasonal illness such as the flu) is a fact-based determination.

Employers should consider telework and leave as reasonable accommodations for employees with illness related to COVID-19 unless doing so imposes an undue hardship. Factors considered when deciding whether providing leave is an undue hardship include: the number of employees, the size of the employer's budget, and the nature of the business or operation.

■ **What medical documentation should employees provide to support a request for reasonable accommodation to work remotely or take leave because they are disabled by COVID-19?**

Generally, when an employee requests a reasonable accommodation in the form of a change in schedule, telework, or leave, employers may request reasonable medical documentation confirming the existence of the disability and the need for reasonable accommodation.

During the current pandemic, it may be impracticable for employees to obtain medical documentation of a COVID-19-related disability from their medical provider. To the extent employers require medical documentation in order to grant reasonable accommodations, DFEH recommends waiving such requirements until such time as the employee can reasonably obtain documentation.

■ DFEH Employment Information on COVID-19

- **During a pandemic, must an employer continue to provide reasonable accommodations for employees with disabilities that are unrelated to the pandemic, barring undue hardship?**

Yes. An employer's responsibilities to individuals with disabilities continue during a pandemic.

If you think you have been a victim of employment discrimination, please contact DFEH.

If you have a disability that requires a reasonable accommodation, the DFEH can assist you by scribing your intake by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or you can contact us below.

TO FILE A COMPLAINT

Department of Fair Employment and Housing

dfeh.ca.gov

Toll Free: 800.884.1684

TTY: 800.700.2320



SAFER

Safe Actions For Employee Returns

Employee Return to-Worksite Status

Because COVID-19 will potentially continue to present risks to workforces after parts of the country move into progressive response phases, employers should consider remaining flexible in their telework and leave policies to help prevent the spread of the coronavirus while also being sensitive to individual employee situations.

The following tablesⁱ present guidance on how to determine which employees should return to work, taking into account the individual employee's health status and other mitigating factors. The options for employee work status include (1) telework, (2) report to work, and (3) weather and COVID-related leave, which is granted if employees cannot safely travel to work for weather- or COVID-19 -related reasons.

Guidance when the worksite is closed

Scenarios		Telework	Reports to work	Weather and COVID-19 Related Leave
If:	And:	Then:		
Employee is not exhibiting symptoms of COVID-19	is directed by a health professional to stay home	✓	✗	✓
	is not directed by a health professional to stay home	✓	✗	✓
	prefers not to come to an otherwise open worksite	✓	✗	✓
	is at high risk of COVID-19 as defined by the CDC	✓	✗	✓
	has children at home due to school or childcare center closures	✓	✗	✓
	has a family member(s) who requires care and the family member is:	not ill	✓	✓
		ill	✓	✓
	returns from travel and is directed by a health professional or supervisor to stay home	✓	✗	✓
	is designated as an emergency employee and ordered to report onsite	✗	✓	✗
	is ill for other reasons	use sick leave		
Employee is symptomatic of COVID-19, is ill, or cannot work		use sick leave		

Guidance when the official worksite is open

Scenarios		Telework	Reports to work	Weather and COVID-19 Related Leave
If:	And:	Then:		
Employee is not exhibiting symptoms of COVID-19	is directed by a health professional to stay home	✓	✗	✓
	is not directed by a health professional to stay home	✓	✓	✗
	prefers not to come to an otherwise open worksite	✓	✓	✗
	is at high risk of COVID-19 as defined by the CDC	✓	✗	✓
	has children at home due to school or childcare center closures	✓	✓	✗
	has a family member(s) who requires care and the family member is:	not ill	✓	✗
		ill	✓	✗
	returns from travel and is directed by a health professional or supervisor to stay home	✓	✗	✓
	is designated as an emergency employee and ordered to report onsite	✓	✓	✗
	is ill for other reasons	use sick leave		
Employee is symptomatic of COVID-19, is ill, or cannot work		use sick leave		

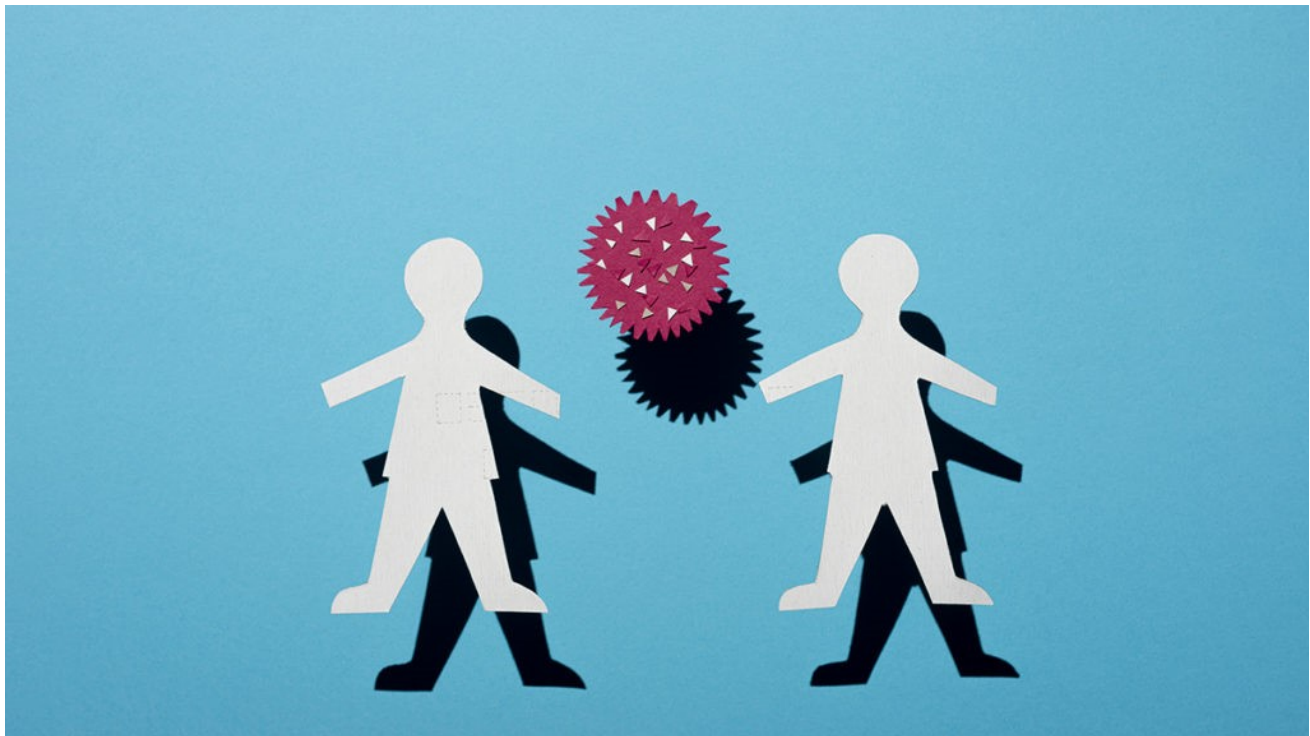
ⁱ Adapted from the Department of Defense, "Civilian Duty Status and Use of Weather and Safety Leave During COVID-19 Pandemic." Memorandum from the Undersecretary of Defense dated March 30, 2020.

MANAGING PEOPLE

Your Employee Tested Positive for Covid-19. What Do You Do?

by [Alisa Cohn](#)

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Francesco Carta fotografo/Getty Images

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All leaders are trying to find their footing right now. You are probably shoring up your business plan, situating your team, and juggling your own constellation of remote working arrangements — possibly alongside your spouse and children. On top of that, you will face a test you probably couldn't have imagined a few weeks ago: When one of your employees tells you they have tested positive for Covid-19. If you haven't dealt with that already, you almost certainly will.

This is a particularly complex challenge. Not only does the moment call for sensitivity and humanity, but it also requires you to act quickly as a manager. As an executive coach, I have coached many senior leaders on high-stakes topics that, like this, require both decisive action and emotional intelligence. Here are my recommendations for how to approach this situation, whether your employees are currently working from home or continuing to go into a workplace:

First, when the employee brings you the news, **express sympathy**. Even if the person's symptoms are mild, they are likely to be anxious about what might happen or whether they might have spread the virus to their family or coworkers. Let the employee share their feelings. As you talk with them, clearly communicate that they can count on you and the team to be supportive. You could say, for example: "I know that this is a scary thing to deal with. I am here for you if you need to talk, and certainly I understand that you may not be able to work for a little while or that your productivity may go down. Don't worry about that, I understand what you're dealing with."

Next, connect with your HR partner. **You need to act quickly to minimize the risk of the disease spreading.** At this point, most HR departments should have some protocols in place, and you will want to utilize their support and guidance.

Minimally, you will need to **ask the employee which coworkers they have been in “close contact” with** within the prior two weeks. (The CDC defines “close contact” as “a person that has been within six feet of the infected employee for a prolonged period of time.”) If everyone in your company has been working from home during the last two weeks, this may be unlikely, but you should still ask if the infected person had contact with any coworkers. You should alert those who have been in close contact with the employee as soon as possible, repeat the advice given on the CDC site for their situation and, of course, direct them to their own doctors. The law is clear about confidentiality here: You should tell everyone who was possibly exposed at work to the positive employee without revealing that employee’s identity.

Then, decide whether you or the HR partner should connect with any close contacts the employee has had. Since this is a sensitive topic, **it’s ideal to alert the coworkers by video or phone.** But time matters here — if you can’t reach them personally, email them with “important action required” in the subject heading.

Either way, **your message is the same:** “Someone in our workplace has tested positive for Covid-19, and they have identified you as a close contact according to the CDC definition. We are here to support you. If you are at work, please prepare to leave as quickly as you can. Once you get home — or if

you are already working from there — find a place to self-isolate, monitor yourself for any symptoms, and talk to your doctors. How can I support you in doing all this?”

You can expect people in the close contact group to be nervous and ask a lot of questions, especially if it’s the first time they are receiving such news. Since several days have passed between their exposure to the Covid-positive colleague, they may ask you if their family is at risk. Don’t speculate. You are not a doctor, Instead, refer them to their own physician and to the CDC website. What you *can* do is reassure them that the company, and you, will be supportive.

Follow up this conversation by email. It’s likely that the person you were talking to was feeling overwhelmed and did not catch everything you said. A written follow-up is always good practice, if only to help keep track of this process inside of your company.

Once you have spoken with both the employee who tested positive and their close contacts, consider alerting others in the workplace. The message you send here will showcase how your company treats people, so it’s important to be transparent and calming.

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The ways you communicate this can vary. If the company is a startup with a few hundred employees, it may be appropriate to communicate the news to everyone in an all-hands meeting. If your company is much larger, it’s most important to communicate to the

affected department or division. **Respect the confidentiality of both the positive-tested employee and anyone in the close-contact group.** Then simply give them the facts: “The person tested positive on a certain date and is now self-isolating. The close contacts have been told and were asked to leave the workplace and self-isolate. If you were not already told you were a close contact, then you are not one. If you have questions about Covid-19 or your situation please call your doctor and look at the CDC website. The company is here to support everyone during this difficult time, and we all send our best wishes to the people affected.”

Finally, **it is helpful for a senior leader, including the CEO, to check in on an employee affected by the coronavirus.** In the past week, a CEO I coach has called every one of their employees who tested positive and their close contacts — even if they were showing no symptoms — just to check in, a gesture they universally appreciated. If the cases at your company start to increase dramatically, it will not be realistic for the CEO to call all these people. However senior leaders can and should step in to make as many calls as possible so employees who are affected feel cared for during a difficult time.

These are not easy times for anyone, and it is a crucial job of leaders to reassure their employees and keep up their spirits. An employee who reports a positive Covid-19 test requires a sensitive and rapid response. That will help everyone who works for you feel more secure and be more able to focus on the important work at your company right now.

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Alisa Cohn is an executive coach who specializes in work with Fortune 500 companies and prominent startups, including Google, Microsoft, Foursquare, Venmo, and Etsy. You can download her free list of questions to start conversation here. Learn more at alisacohn.com.

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P.S. All that stuff about having the CEO and senior leaders contact all the close contacts...just tells me that you either have not been in the workplace for very long, or you have no idea how the dynamics between senior management and lower-level employees really work. If your employees don't get calls from the CEO for any other reason, this is going to appear to them to be totally disingenuous...because it is.

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