

# What Can I do If One of My Employees Tests Positive for COVID-19? Employer Rights and Obligations Under the Americans with Disabilities Act

## EEOC Guidelines: COVID-19 and the ADA

Scenario	Permissible Employer Action During Pandemic
The employee has <b>tested positive</b> for COVID-19	The employer may send the COVID-19-positive employee home from work. The employer should inform fellow employees of their possible exposure to COVID-19 but maintain confidentiality as required by the ADA. The fellow employees should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).
The employee is <b>displaying symptoms</b> of COVID-19	The employer may send the employee displaying COVID-19 symptoms home from work.
The employee reports <b>feeling ill</b> at work.	The employer may ask the employee questions about their symptoms to determine if the employee has COVID-19 (shortness of breath or difficulty breathing, cough and displaying at least two of the following: fever, chills, repeated shaking with chills, muscle pain, headache, sore throat, loss of taste or smell).
The employee <b>calls in sick</b> from work.	The employer may ask the employee questions about their symptoms to determine if the employee has COVID-19 (see above list of symptoms).
The employer wants to take its employees' <b>temperatures</b> .	The employer may take its employees' temperatures, but such information is subject to the ADA's confidentiality requirements (100.4 or higher and employee should be sent home).
The employee <b>returns from travel</b> , whether for business or personal reasons.	If health officials recommend that people who visit specified locations remain at home until they no longer have COVID-19 symptoms, the employer may ask its employees if they are returning from these locations.
The employer wants to implement <b>infection control measures</b> .	The employer may require such measures, including regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal; sanitizing work areas daily and commonly used areas/equipment before or after each use; wearing a mask or gloves, subject to the ADA's reasonable accommodation requirements (i.e. providing non-latex gloves if employee allergic to latex)
The employee has <b>failed to report to work</b> for some time.	The employer may ask why the employee failed to report to work, even if the employer suspects a medical reason, because asking an employee why they failed to report to work is not a disability-related inquiry under the ADA.
The employer wants a <b>doctor's note</b> before permitting employees to return to work.	The employer may require employees who have been away from work to provide a doctor's note or other documentation certifying their fitness to return to work.

Information obtained from Meyer, Suozzi, English & Klein, P.C.



An Assurex Global Partner