

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 tested positive 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 displaying symptoms of COVID-19	The employer may send the employee displaying COVID-19 symptoms home from work.
The employee reports feeling ill 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 calls in sick 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' temperatures .	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 returns from travel , 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 infection control measures .	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 failed to report to work 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 doctor's note 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.



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