

MPCC Roundtable June 16, 2020 TPO Update



For questions or additional information regarding the below update, please contact Michaelle Stanford, PHR-ca, M.A. at michaelles@tpohr.com

Continuing the Story: As Monterey County Re-opens

As businesses slowly re-open (and where direct customer engagement is a large part of your business), greater is the potential for employees who demonstrate and/or test positive for Covid-19 symptoms. It is advised that you think now about the processes you will put in place for sending employee's home, requiring a healthcare provider's note upon return and how you will communicate to employees if their co-worker was tested positive.

As you develop your policies, be mindful of the EEOC and CDC Guidance as well as other sources including the Department of Labor. **Note:** This information is provided to make you think and ensure you are prepared. The information is not intended to be all inclusive. **Be sure to check with your HR representative or other employment expert.**

CDC: COVID-19 Exposure/Symptoms/Testing Positive & Sending Employees Home

If the employee becomes sick during the day, they should be sent home immediately. Surfaces in their workspace should be cleaned and disinfected. Information on persons who had contact with the ill employee during the time the employee had symptoms and 2 days prior to symptoms should be compiled. Others at the facility with close contact within 6 feet of the employee during this time would be considered exposed.

Employers should implement the recommendations in the [Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019](#) to help prevent and slow the spread of COVID-19 in the workplace.

See the [CDC's Guidance](#) that can be used in returning employees to the workplace when individuals:

- Think or know they had COVID-19 and had symptoms
- Tested positive for COVID-19 but had no symptoms
- Have a compromised immune system due to a health condition or medication
- For anyone who has been around a person with COVID-19

EEOC: COVID-19 Disability Related Work Inquiries

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

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.**

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.

EEOC: COVID-19 Medical Information Confidentiality

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.

CDC: COVID-19 Exposure in the Workplace

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

Employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but should not disclose to co-workers the identity of the employee because confidentiality requirements under federal law, with the Americans with Disabilities Act (ADA).

Determine which employees may have been exposed to the virus and may need to take additional precautions:

- Inform employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the [Americans with Disabilities Act \(ADA\)](#)^{external icon}.
- Most workplaces should follow the [Public Health Recommendations for Community-Related Exposure](#) and instruct potentially exposed employees to stay home for 14 days, telework if possible, and self-monitor for [symptoms](#).
- [Critical infrastructure](#)^{external icon} workplaces should follow the guidance on [Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19](#). Employers in critical infrastructure also have an obligation to manage potentially exposed workers' return to work in ways that best protect the health of those workers, their co-workers, and the general public.