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COVID-19: Employers' Frequently Asked Questions

During the COVID-19 pandemic, employers are struggling to determine how to protect their current workforce. We've compiled a list of common inquiries regarding this pandemic.

I have an employee who has called in sick. Can I ask them if they are experiencing symptoms of COVID-19? Yes. You may ask employees if they have symptoms of COVID-19 [i.e., fever, chills, loss of taste/smell, shortness of breath] as long as you maintain the information about any potential illness as a confidential medical record.

If an employee comes in and appears to be showing symptoms of COVID-19, can I ask them to go home? Yes. Send the employee home and take all appropriate steps to inform employees who have worked near with that employee in the last 14 days of potential exposure without disclosing the identity of the affected employee.

Can I take the temperature of one of my employees who is working on-premises? Typically, no. Taking an employee's body temperature is considered a medical examination. However, given the CDC's precautions regarding the spread of COVID-19, the EEOC has issued guidelines that permit employers to measure employees' temperatures. Employers must exercise care with any such temperature readings, as they are considered medical records and there are legal restrictions that go along with such records.

Can I administer COVID-19 tests to employees before they come back to work to determine if they are infected with the virus? Yes. The EEOC updated its guidance on April 23, 2020. Employers are now allowed to test for COVID-19 without running afoul of the Americans with Disabilities Act, so long as the employer can ensure that any tests administered are accurate and reliable.

I have a healthy employee who I need to report to work, but they say they cannot come in because they have a baby at home and are afraid to expose the baby to COVID-19. Can I require them to come to work? Maybe. First, you must determine if they had a valid basis for paid or unpaid leave or accommodation. Fear of contracting or being

exposed to COVID-19 is not a qualifying reason for leave under the Families First Coronavirus Response Act or other federal and state laws. You should also consider state and federal disability and leave laws, such as the ADA and the FMLA. If there is no disability or serious health condition present with the employee or their family members, they wouldn't be entitled to leave or accommodation. If they have PTO, they must be allowed to exhaust it before they are required to report to work. Otherwise, you may terminate an employee for violation of company attendance policy who fails to report to work and has no basis for leave.

Employers should consider accommodations that can be made without removing essential job functions [e.g., modifying schedules, staggering shifts, transferring an employee to a different position temporarily, and if it's possible, working remotely]. The DOL and EEOC are encouraging employers to be flexible during this time. Employers should document the accommodations that are offered to an employee; if the employee refuses accommodation, you can later prove that you've satisfied your legal obligations to that employee.

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