



AHLA's COVID-19 Legal & HR FAQs

Got a question?
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Q: Do you have any recommendation for faculty or students in higher education?



A: Any Institute in any community might need to implement short-term building closure procedures regardless of community spread if an infected person has been on campus. If this happens, CDC recommends the following procedures, regardless of level of community spread: Coordinate with local health officials. Work with local public health officials to determine cancellation of classes and closure of buildings and facilities. Communicate with students, staff, and faculty. Clean and disinfect thoroughly. Make decisions about extending the class suspension and event and activity cancellation. Implement strategies to continue education and other related supports for students. (Source: www.CDC.gov)

Q: There has been a lot of conversations around taking the temperature of employees if they are showing symptoms OR potentially testing all employees before they clock in for their shift. What is the AHLA recommendation on this topic?

A: Yes. The EEOC confirmed that measuring employees' body temperatures is permissible given the current circumstances. While the Americans with Disabilities Act (ADA) places restrictions on the inquiries that an employer can make into an employee's medical status, and the EEOC considers taking an employee's temperature to be a "medical examination" under the ADA, the federal agency recognizes the need for this action now because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions. Note: If your company does business in the State of California (e.g., if you have one or more locations, employees, customers, suppliers, etc. in the state), and your business is subject to the California Consumer Privacy Act (CCPA), then you must provide employees a CCPA-compliant notice prior to or at the same time as your collection of this information

(Source: <https://www.fisherphillips.com/faqs>)

Q: If you have office staff returning from an out of country trip how long should they self-isolate before coming in to work?

A: Employers cannot prohibit otherwise legal activity, such as personal travel. Employers should advise employees traveling in areas where COVID19 is an issue to take proper precaution. (Source:

<https://www.fisherphillips.com/faqs>)

Q: What is the suggestion for employees taking cruises - can we have them self-quarantine? What options do we have?

A: Employers cannot prohibit otherwise legal activity, such as personal travel. Employers should advise employees traveling in areas where COVID19 is an issue to take proper precaution. If the CDC or state or



local public health officials recommend that people who visit specified locations remain at home after traveling, an employer may ask an employee what locations they have traveled to, even if the travel was for personal reasons. (Source: <https://www.fisherphillips.com/faqs>)

Q: In a hotel environment, when informed post-departure of a positive test, what would you recommend for the hotel's course of action?

A: You should send home all employees who worked closely with that person for a 14-day period of time to ensure the infection does not spread. Before the employee departs, ask them to identify all individuals who worked in close proximity (three to six feet) with them in the previous 14 days to ensure you have a full list of those who should be sent home. When sending the employees home, do not identify by name the infected person or you could risk a violation of confidentiality laws. You may also want to consider asking a cleaning company to undertake a deep cleaning of your affected workspaces. (Source: AHLA's COVID-19 Prevention and Preparedness Resource)

Q: What is the recommended protocol for notifying guests should you have a guest/employee confirmed case of COVID-19?

A: Follow local health dept. requirements, communicate with other employees who have been exposed and report to work comp. carrier. (Source: Lockton Companies)

Q: What is the suggested response procedure if someone (employee or guest) is diagnosed with Coronavirus in a hotel? Specifically, what are the first three steps that employers should take?

A: CDC recommends that employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and sent home immediately. It is recommended to close off areas used by the ill persons and wait as long as practical before beginning cleaning and disinfection to minimize potential for exposure to respiratory droplets. Open outside doors and windows to increase air circulation in the area. If possible, wait up to 24 hours before beginning cleaning and disinfection. Cleaning staff should clean and disinfect all areas (e.g., offices, bathrooms, and common areas) used by the ill persons, focusing especially on frequently touched surfaces. (Source: www.CDC.gov and <https://www.fisherphillips.com/faqs>)

Q: Does this count as an "act of God" for Force Majeure clauses in hotel contracts?

A: Force majeure is generally thought of as an event that makes contract performance so difficult as to be impossible, or actually incapable of performance. Contract clauses that focus on force majeure may contain very specific language that defines what type of event can constitute a valid force majeure event, as well as notice periods for such claims, mitigation obligations, and remedies. In connection



with any cancellations asserting force majeure due to the Coronavirus, hotel owners and operators should carefully review force majeure clauses in their contracts to determine if such cancellation falls within the scope of the clause, and if not, what remedies they have available for a breach of the contract. (Source: Nat'l Law Review)

Q: If a hotel/lodging facility has infected people stay and the facility gets locked down so guests and owners have to stay in place, what should we plan for if this happens?

A: For people who are self-quarantining, (workers) are leaving towels or room service at the door and not going in. Hotels are also limiting or shutting down open spaces and ensuring surfaces are scrubbed with antibacterial solutions in an effort to improve cleanliness. (Source: www.CDC.gov)

Q: When an employee is hesitant to travel at this time but it is considered a work imperative, can we require them to travel?

A: Employees who object on behalf of others or act in groups could be covered by the NLRA's protection of concerted protected activity. You will want to proceed with caution and consult with your attorney before taking any steps in this regard. Moreover, under the federal OSH Act, employees can only refuse to work when a realistic threat is present. Therefore, if employees refuse your instruction to travel for business to any other country for fear of catching the COVID-19 coronavirus, try to work out an amicable resolution. For example, the employer and the employee can check and discuss the CDC (avoid Nonessential travel), State Department (Do Not Travel to China), and DHS Travel Advisories, which provide guidance on China Travel. The CDC is also advising that some individuals may be more at risk of infection than others in the general population. (Source: www.CDC.gov)

Q: In states where there are sick and safe laws, that state we can't require a doctor's note three or more days of absence, has that changed due to the pandemic?

A: Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way. (Source: AHLA's COVID-19 Prevention & Preparedness Resources)

Q: Is it possible to quickly detail the difference between furlough and layoff, and what happens with health benefits?

A: Many companies use these terms interchangeably. The label placed on the action is not likely to be legally determinative. Instead, the action itself will be the focus. With furloughs, employees continue their employment – for example with either reduced hours or a reduced schedule (such as 3 days per



week or working every other week). Some employers “furlough” employees for weeks or months, a layoff occurs when the employer decides to eliminate a position or group of employees. (Source: <https://www.fisherphillips.com/faqs>)

Q: Are we obligated to tell the county health department if an employee has been confirmed as having the virus?

A: The privacy restrictions mandated by HIPAA only apply to “covered entities” such as medical providers or employer-sponsored group health plans, and then only in connection with individually identifiable health information. Employers are not covered entities, so if you have medical information in your employment records, it is not subject to HIPAA restrictions. Nevertheless, disclosures should be made only to authorized personnel, and care should be taken even in disclosures to government personnel or other groups such as the Red Cross. Further, you should be careful not to release information to someone until you have properly identified them. (Source: <https://www.fisherphillips.com/faqs>)

Q: What are we legally able to ask our hotel guests? If they have gone to the hospital for flu like symptoms, can we require any documentation for them being cleared?

A: ADA prohibits employers from making disability-related inquiries and requiring medical examinations unless (1) the employer can show that the inquiry or exam is job-related and consistent with business necessity, or (2) the employer has a reasonable belief that the employee poses a “direct threat” to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation. According to the EEOC, whether a particular outbreak rises to the level of a “direct threat” depends on the severity of the illness. The EEOC instructs employers that the assessment by the CDC or public health authorities provides the objective evidence needed for a disability-related inquiry or medical examination. During a pandemic, an employer does not have to wait until an employee develops symptoms to ask questions about exposure to a pandemic influenza during recent travel. (Source: <https://www.fisherphillips.com/faqs>)



Q: Is there any law/requirement that requires an employee to disclose to an employer a positive finding of Coronavirus?

A: If an employee is confirmed to have the Coronavirus infection, employers should inform fellow employees of their possible exposure to the Coronavirus in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA). Employees exposed to a co-worker with confirmed Coronavirus should refer to CDC guidance for how to conduct a risk assessment of their potential exposure. (Source: AHLA Coronavirus one-pager)

Can workers in high risk categories stay home and have their job protected?

Employees are only entitled to refuse to work if they believe they are in imminent danger. Section 13(a) of the Occupational Safety and Health Act (OSH Act) defines “imminent danger” to include “any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.” OSHA discusses imminent danger as where there is “threat of death or serious physical harm,” or “a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency.” The threat must be immediate or imminent, which means that an employee must believe that death or serious physical harm could occur within a short time, for example, before OSHA could investigate the problem. Requiring travel to China or to work with patients in a medical setting without personal protective equipment at this time may rise to this threshold. Most work conditions in the United States, however, do not meet the elements required for an employee to refuse to work. Once again, this guidance is general, and employers must determine when this unusual state exists in your workplace before determining whether it is permissible for employees to refuse to work. (Source: AHLA’s COVID-19 Prevention & Preparedness Resources)

Q: How much information can you ask regarding an employee's doctor visit? Can you ask for medical note when they want to stay away from work? Or require it for return to work?

A: The government recently sent a stern reminder to all employers, that they must still comply with the protections contained in the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule during the COVID-19 coronavirus outbreak. The Office for Civil Rights of the U.S. Department of Health and Human Services (HHS) issued a reminder after the WHO declared a global health emergency. In fact,



the Rule includes provisions that are directly applicable to the current circumstances. (Source: <https://www.fisherphillips.com/faqs>)

Q: What if you send an employee home who complains of fever and cough? After a visit to the doctor and 24 hours later, the employee feels better and the doctor believes it to be just a cold, but there are no coronavirus tests to confirm a negative diagnosis. How would we handle clearing that person to come back to work?

A: If any employee presents themselves at work with a fever or difficulty in breathing, this indicates that they should seek medical evaluation. While these symptoms are not always associated with influenza and the likelihood of an employee having the COVID-19 coronavirus is low, it pays to err on the side of caution. Retrain your supervisors on the importance of not overreacting to situations in the workplace potentially related to COVID-19 in order to prevent panic among the workforce. See above for HIPAA laws regarding doctor's notes. (Source: AHLA's COVID-19 Prevention & Preparedness Resources)

Q: So that we don't have to lay employees off due to very low occupancy rates, can we require employees to use their vacation and/or sick time in the next four weeks?

A: This is largely a question of state law and the language of the employer's own policies. In general terms, however, an employee can take advantage of their accrued sick, vacation, or PTO benefits in accordance with the terms of the employer's policies. (Source: <https://www.bakerlaw.com/Coronavirus-COVID-19>)

Q: What questions can you ask a guest that is checking in that is coughing and sneezing?

A: You have to balance the risk of upsetting the guest with personal questions against the public risk or a safety claim from an employee who refuses to work. More and more companies are requiring patrons to certify that they haven't traveled to a hot zone. (Source: <https://www.fisherphillips.com/faqs>)

Q: If an employee needs to be out of work for at least 14 days or more due to coronavirus, or related quarantine, can we expect any relief from disability/short term disability?

A: The Emergency Paid Sick Leave Act provides up to 2 weeks/80 hours of sick pay for many employees who miss work for designated reasons related to the coronavirus. The DOL refers to this as "paid sick leave." The second, the Emergency Family and Medical Leave Expansion Act amends the Family and



Medical Leave Act to provide up to 12 weeks of leave, 10 of which are paid at 2/3 pay. The DOL refers to this as “expanded Family and Medical Leave.” (Source: <https://www.bakerlaw.com/Coronavirus-COVID-19>)