

Asking Employees About COVID-19 Symptoms

The Equal Employment Opportunity Commission (EEOC) updated its guidance regarding employer obligations related to COVID-19.

Guidance highlights include:

MEDICAL INQUIRIES

Can I ask employees if they have COVID-19 symptoms?

Yes. In addition to daily temperature screens, you can ask your employees who are entering the workplace if they are experiencing symptoms of COVID-19 and if they have been tested for it.

The key is to treat all employees equally. If you single out anyone for questioning or a temperature screen, you must have a "reasonable belief based on objective evidence" that the employee might have COVID-19. For example: if you overheard an employee saying that they, or a member of their family/household, has COVID-19; or you observed your employee exhibiting symptoms such as coughing; or a coworker told you the employee was exhibiting symptoms.

Can I ask employees if anyone in their family has COVID-19?

No. You cannot ask an employee if anyone in their family has symptoms of, or has, COVID-19. However, you can ask employees if they have had contact with anyone diagnosed with COVID-19 or has symptoms associated with COVID-19.

Can I bar employees from the workplace if they refuse to answer questions about if they have COVID-19, have symptoms associated with COVID-19, have been tested for COVID-19, or if they refuse to take a temperature screen?

Yes. The ADA allows an employer to bar an employee from physical presence in the workplace for any of the above. However, if an employee requests a reasonable accommodation with respect to screening, the employer should comply.

To gain their cooperation, you may want to ask the reason for their refusal. Reassuring them that this is for everyone's health and safety and that these steps are in keeping with CDC recommendations might help. As well as reassuring them that their health information will be kept confidential.

For employees who are teleworking and not physically interacting with coworkers or others (ie: customers), you would generally not be permitted to ask these questions.

Can I require employees to stay home if they have symptoms of COVID-19?

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace.

According to the CDC, symptoms may include fever, chills, cough, shortness of breath, sore throat, fatigue, body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea.

After an employee returns to work, can I require a doctor's note certifying their fitness-for-duty?

Yes. If the doctor is too busy during the pandemic to provide "fitness-for-duty" documentation, you may have to rely on local clinics to provide a form or an email certifying that your employee does not have COVID-19.

If an employee knows that a coworker has symptoms, can that employee disclose the coworker's symptoms to a supervisor?

Yes. ADA confidentiality does not prevent an employee from communicating this to a supervisor.

EMPLOYER TRAVEL POLICIES

Can I ask an employee where they have traveled?

Yes. According to the EEOC, employers are permitted to ask questions about where an employee has traveled.

If the CDC, state, or local public health officials recommend that people who visit specified locations remain at home for a certain period of time, an employer may ask or require employees to report when they visit these locations, even if the travel was personal. If you implement a travel policy, be sure to apply it consistently.

What if an employee doesn't come into work after traveling?

Employers may ask why an employee did not report to work. California employers should keep in mind that when employees choose to take California paid sick leave, you are not allowed to require medical certification.



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CONFIDENTIALITY OF MEDICAL INFORMATION

Under California law, employees have extensive medical privacy rights. California employers should establish procedures to protect the unauthorized use and disclosure of medical information. The ADA requires that medical information be stored separately from an employee's personnel file, thus limiting access to this confidential information. It should only be accessible to employees with a need to know, such as HR or benefits personnel.

ADDITIONAL LINKS:

[What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)

[Center for Disease Control and Prevention \(CDC\) General Business Frequently Asked Questions](#)