

COVID-19

CORONAVIRUS DISEASE

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Physicians Caring for Texans

COVID-19: Human Resources Frequently Asked Questions (FAQs)

TMA Practice Management Services

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Which employers are covered under the Families First Coronavirus Response Act (FFCRA)?

([DOL](#), 7/6/20)

A. Until Dec. 31, 2020, private employers (including nonprofits) with fewer than 500 employees (and certain public employers) are required to provide eligible employees paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. There is an exception, however, applicable to small businesses. For assistance in determining whether you are a covered employer, see the [Department of Labor's \(DOL's\) FFCRA guidance](#).

How does a small business claim an exemption under the FFCRA? ([DOL](#), 7/6/20)

A. A small business (an employer with fewer than 50 employees) is exempt from providing the following types of leave, when doing so would jeopardize the viability of the small business as a going concern: (1) paid sick leave due to school or place-of-care closures or child care provider unavailability for COVID-19-related reasons, and (2) expanded family and medical leave due to school or place-of-care closures or child care provider unavailability for COVID-19-related reasons.

A small business may claim the small business exemption under the FFCRA if an authorized officer of the business has determined that:

- The provision of paid sick leave or expanded family and medical leave would result in the small business' expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;

- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; **or**
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and this labor or services are needed for the small business to operate at a minimal capacity.

There is no application process. To elect this exemption, the business must document the determination by its authorized officer that it is eligible for the exemption pursuant to these criteria and retain that documentation in their own files for four years. The business should not send this documentation to the Department of Labor.

Which employees are eligible under the FFCRA for expanded family and medical leave and paid sick leave? ([DOL](#), 7/6/20)

A. All employees, regardless of time employed, are eligible for two weeks of paid sick leave for specified reasons related to COVID-19. All employees who have been [employed for at least 30 days](#) are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19. The Department of Labor has [an online tool](#) to help employees determine their eligibility for leave under the FFCRA. For further details, visit the [DOL COVID-19 and the American Workplace](#) website.

Note that an employer whose employee is a [health care provider](#) or an [emergency responder](#) *may elect* to exclude the employee from the paid sick leave and expanded family and medical leave under the FFCRA. Importantly, however, the Department of Labor encourages employers to be judicious when exempting health care providers and emergency responders from the provisions of the FFCRA in order to minimize the spread of COVID-19.

Am I required to provide *paid sick leave* to employees who can't work because of COVID-19? ([DOL](#), 7/6/20)

A. Covered employers must provide to employees:

- Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work (or telework) because the employee is quarantined (pursuant to a federal, state, or local quarantine or isolation order related to COVID-19, or under the advice of a physician or health care provider to self-quarantine due to concerns related to COVID-19), or is experiencing symptoms of COVID-19 and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work (or telework) due to a bona fide need to care for an individual subject to quarantine (pursuant to a federal, state, or local quarantine or isolation order related to COVID-19 or under the advice of a physician or health care provider to self-quarantine due to concerns related to COVID-19) or to care for a child (under 18 years of age) whose school is closed or child care provider is unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition specified by the U.S. Department of Health and Human Services, in consultation with the Treasury and Labor departments.

For further details, including how to calculate the regular rate of pay and any applicable caps, see the [Department of Labor's FFCRA FAQs](#).

Am I required to provide *paid family and medical leave* to employees who can't work because of COVID-19? ([DOL](#), 7/6/20)

A. A covered employer must provide to employees it has employed for at least 30 days up to an additional 10 weeks (12 weeks total) of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee is [unable to work or telework](#) due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. For further details, including how to calculate the regular rate of pay and any applicable caps, visit the [Department of Labor's FFCRA FAQs](#).

What documents do employees need to provide when requesting paid sick leave or expanded family and medical leave? ([DOL](#), 7/8/20)

A. When requesting paid sick leave or expanded family and medical leave, an employee must provide the employer either orally or in writing the following information:

- The employee's name,
- The date(s) for which the employee is requesting leave,
- The reason for leave, and
- A statement that the employee is unable to work because of the above reason.

If the employee requests leave because he or she is subject to a quarantine or isolation order or to care for an individual subject to such an order, the employee should additionally provide the name of the government entity that issued the order. If the employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, the employee should additionally provide the name of the health care provider who gave advice.

If the employee requests leave to care for the employee's child whose school or place of care is closed, or child care provider is unavailable, the employee must also provide:

- The name of the employee's child;
- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement that no other suitable person is available to care for the employee's child.

In addition to the above information, the employee must also provide to the employer written documentation in support of the employee's paid sick leave as specified in applicable Internal Revenue Service (IRS) forms, instructions, and information.

Employers are required to retain the documentation for four years, regardless of whether leave was granted or denied. If an employee provided oral statements to support the request for leave, the employer is required to document and maintain such information in its records for four years. (See [29 CFR § 826.140](#), 7/8/20)

★ Please also note that all existing certification requirements under the Family and Medical Leave Act (FMLA) remain in effect if the employee is taking leave for one of the existing qualifying reasons under the FMLA.

When must an employee notify the employer about a request for leave? (See [29 CFR § 826.90](#), 7/8/20)

A. Generally, an employer may require an employee to follow reasonable notice procedures after the first workday (or portion of it) for which an employee takes paid leave (although the Department of Labor *encourages* employees to notify employers about their request as soon as practicable). After the first workday, it will be reasonable for an employer to require notice as soon as practicable under the facts and circumstances of the particular case. However, in any case where an employee requests leave in order to care for the employee's child whose school or child care provider is unavailable due to COVID-19-related reasons and that leave was foreseeable, an employee is required to provide the employer with notice as soon as practicable. If an employee fails to give proper notice, the employer should give the employee notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.

After being furloughed, a full-time employee who used two weeks (80 hours) of paid sick leave under the FFCRA is going back to work. Can the employee use paid sick leave under the FFCRA again? ([DOL](#), 7/20/20)

A. No. Employees are limited to a total of 80 hours of paid sick leave under the FFCRA. If the employee had taken fewer than 80 hours of paid sick leave before the furlough, the employee would be entitled to use the remaining hours after the furlough if the employee had a qualifying reason to do so.

After being furloughed, an employee who used four weeks of expanded family and medical leave is returning to work. If the employee still needs to care for the employee's child because the child care provider is unavailable for COVID-related reasons, how much expanded family and medical leave does the employee have available? ([DOL](#), 7/20/20)

A. Under the FFCRA, the employee is entitled to up to 12 weeks of expanded family and medical leave. The employee used four weeks of that leave before the employee was furloughed, and the weeks that the employee was furloughed do not count as time on leave. When the employee returns from furlough, the employee will be eligible for eight additional weeks of leave if the employee has a qualifying reason to take it.

Because the reason the employee needs leave may have changed during the furlough, the employer should treat a post-furlough request for expanded family and medical leave as a new leave request and have the employee give you the appropriate documentation related to the reason the employee currently needs leave. For example, before the furlough, the employee may have needed leave because the employee child's school was closed, but the employee might need it now because the employee child's summer camp is closed due to COVID-19-related reasons.

An employer's business was closed due to the state's COVID-19 quarantine order, and all employees were furloughed. The quarantine order was lifted, and the employees are returning to work. Can the employer extend a former employee's furlough because the employee would need to take FFCRA leave to care for the employee's child if the employee is called back to work? ([DOL](#), 7/20/20)

A. No. Employers may not discriminate or retaliate against employees (or prospective employees) for exercising or attempting to exercise their right to take leave under the FFCRA. If the employee's need to care for a child qualifies for FFCRA leave, whether paid sick leave or expanded family and medical leave, the employee has a right to take that leave until the employee has used all of it. Employers may not use requests for leave (or an assumption that an employee would make such a request) as a negative

factor in an employment decision, such as a decision as to which employees to recall from furlough.

Are employers required to post the Families First Coronavirus Response Act notice? ([DOL](#), 7/8/20)

A. Each covered employer (even a small business otherwise exempt) is required to post a notice that explains the FFCRA's paid leave provisions and provides information about filing complaints, in a conspicuous place on its premises. An employer may satisfy the posting requirement by emailing or mailing the notice to employees, or by posting the notice on an employee information internal or external website.

Employers may use the [Department of Labor's model notice](#) or another format as long as it includes all of the information contained in the model notice. Employers are not required to post the notice in multiple languages, but the Department of Labor has [several translations available](#). For more information on the notice, see the [Families First Coronavirus Response Act Notice Frequently Asked Questions](#).

Are tax credits available to help offset the cost of providing paid leave under the FFCRA? ([IRS](#), 7/8/20)

A. Yes. The FFCRA provides covered employers with tax credits to cover certain costs of providing employees with required leave. The credits cover 100% of up to 10 days of the [qualified sick leave wages](#) and up to 10 weeks of the [qualified family leave wages](#) (and any [qualified health plan expenses](#) allocable to those wages) a covered employer paid during a calendar quarter, plus the amount of the [employer's share of Medicare taxes](#) imposed on those wages.

Employers will claim the credits on their federal employment tax returns (e.g., Form 941, Employer's Quarterly Federal Tax Return) but may benefit more quickly from the credits by reducing their federal employment tax deposits. If there are insufficient federal employment taxes to cover the amount of the credits, an employer may request an advance payment of the credits from the IRS by submitting a [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#). For more information, see [How do Eligible Employers claim the credits?](#)

To substantiate the claim for credit, [employers are advised to maintain the following records](#) for four years:

- Documentation that substantiates the employee(s) eligibility for the qualified sick and/or family leave (i.e., the employee's request for leave);
- Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees eligible for the credit, including records of work, telework, and qualified sick leave and qualified family leave;
- Documentation to show how the employer determined the amount of qualified health plan expenses the employer allocated to wages;
- Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, the employer submitted to the IRS; and
- Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, the employer submitted to the IRS (or, for employers that use third-party payers to meet their employment tax obligations, records of information provided to the third-party payer regarding the employer's entitlement to the credit claimed on Form 941).

For more information, see the [COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs](#). Consult your certified public accountant for additional questions.

WORKING FROM HOME

Do employers have to pay employees their same hourly rate or salary if they work from home? ([DOL](#), 7/8/20)

A. Generally, employers have to pay employees only for the hours they actually work, whether at home or at the office. However, employers are required to pay nonexempt (hourly) workers at least the minimum wage for all hours worked, and at least time and one-half the regular rate of pay for hours worked in excess of 40 in a workweek. Salaried exempt employees generally must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions. If telework is being provided as a reasonable accommodation for a qualified individual with a disability, or if required by a union or employment contract, then you must pay the same hourly rate or salary.

Do employers who allow employees to telework have to pay their employees for hours the employer did not authorize them to work? Do employers have to pay employees for hours worked even when they do not report those hours? ([DOL](#), 7/20/20)

A. Work performed away from the primary worksite, including at the employee's home, is treated the same as work performed at the primary worksite for purposes of compensability. Therefore, an employer must compensate an employee for all hours of telework actually performed away from the primary worksite, including overtime work, in accordance with the Fair Labor Standards Act, provided the employer knew or had reason to believe the work was performed. This is true even of hours of telework the employer did not authorize. The employer also must compensate an employee for unreported hours of telework the employer knows or has reason to believe had been performed. However, an employer is not required to compensate an employee for unreported hours of telework the employer has no reason to believe had been performed, (i.e., where the employer neither knew nor should have known about the unreported hours). In most cases, an employer may satisfy the obligation to compensate teleworking employees by providing reasonable time-reporting procedures and compensating those employees for all reported hours.

I am an employer who allows my employees to telework during the COVID-19 emergency. I would also like to give my employees flexibility in hours of work so they can take time out of the normal workday for personal and family obligations, such as caring for their children whose schools have closed. If I allow my employees to begin work, take several hours in the middle of the workday to care for their children, and then return to work, do I have to compensate them for all of the hours between starting work and finishing work? ([DOL](#), 7/20/20)

A. No. While, generally, all time between the performance of the first and last principal activities of a workday is generally compensable work time, the Department of Labor recognizes that applying this guidance to teleworking arrangement would

discourage needed flexibility during the COVID-19 emergency. As such, an employer that allows employees to telework with flexible hours during the COVID-19 emergency does not need to count as hours worked all the time between an employee's first and last principal activities in a workday. For example, assume you and your employee agree to a telework schedule of 7-9 am, 11:30-3 pm, and 7-9 pm on weekdays. This allows your employee, for instance, to help teach his or her children whose schools are closed, reserving for work times when there are fewer distractions. Of course, you must compensate your employee for all hours actually worked – 7.5 hours – that day, but not all 14 hours between your employee's first principal activity at 7 am and last at 9 pm.

Do I need to have a work-from-home agreement in place? (3/26/20)

A. No, but it is recommended to have a work-from-home agreement.

Do I need to reimburse work-from-home expenses (e.g., use of cell phone, internet) while staff are working remotely? ([DOL](#), 7/8/20)

A. If an employer requires an employee to work from home and the employee is not set up to do so, the employer may want to consider reimbursing the employee for additional expenses incurred. Please note that the Department of Labor has advised that employers may not require employees who are covered by the Fair Labor Standards Act to pay or reimburse the employer for such items that are business expenses of the employer if doing so reduces the employee's earnings below the required minimum wage or overtime compensation. Additionally, employers may not require employees to pay or reimburse the employer for such items [if telework is being provided to a qualified individual with a disability as a reasonable accommodation under the Americans with Disabilities Act \(ADA\)](#). For more information, visit DOL's [COVID-19 and the Fair Labor Standards Act Questions and Answers](#) website.

RETURNING TO WORK

What are the criteria for returning to work for health care personnel with confirmed or suspected COVID-19? ([CDC](#), 4/30/2020; also see [TMA's Infection Control FAQs](#))

A. According to the Centers for Disease Control and Prevention (CDC), the following strategies can be used to determine when health care personnel return to work in health care settings. (Note: CDC recommends decisions about returning to work be made in the context of local circumstances.)

For health care personnel with suspected or confirmed COVID-19 who have symptoms, options are:

1. *Test-based strategy. Exclude from work until:*

- Resolution of fever without the use of fever-reducing medications,
- Improvement in respiratory symptoms (e.g., cough, shortness of breath), and
- Negative results of a U.S. Food and Drug Administration (FDA)-emergency-use-authorized molecular assay for COVID-19 from at least two consecutive nasopharyngeal swab specimens collected ≥ 24 hours apart (total of two negative specimens). See [Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens for COVID-19](#).

2. *Symptom-based strategy. Exclude from work until:*

- At least three days (72 hours) have passed since recovery (defined as resolution of fever without the use of fever-reducing medications),
- Improvement in respiratory symptoms (e.g., cough, shortness of breath), and
- At least 10 days have passed since symptoms first appeared.

For health care personnel with laboratory-confirmed COVID-19 who have not had any symptoms, a time-based strategy can be used:

Time-based strategy. Exclude from work until 10 days have passed since the date of the person's first positive COVID-19 diagnostic test (assuming the person has not subsequently developed symptoms since the positive test). If the person develops symptoms, then the *symptom-based* or *test-based strategy* should be used.

After returning to work, health care personnel should:

- Wear a face mask for source control at all times while in the health care facility until all symptoms are completely resolved or at baseline;
- Adhere to hand hygiene, respiratory hygiene, and cough etiquette in CDC's interim infection control guidance (e.g., cover nose and mouth when coughing or sneezing, dispose of tissues in waste receptacles); and
- Self-monitor for symptoms, and seek reevaluation from occupational health if respiratory symptoms recur or worsen.

Also see [Texas Department of State Health Services \(DSHS\) Interim Guidance for Persons Isolated at Home, including Healthcare Personnel, with Confirmed or Probable Coronavirus Disease 2019 \(COVID-19\)](#) (5/19/20) and [DSHS Test-Based Strategy for Healthcare Personnel Return to Work](#) (5/19/20).

For guidance on nonhealth care professionals returning to work, see [Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings](#) (5/29/2020).

During a pandemic, how much information may an ADA-covered employer request from employees who call in sick? ([EEOC](#), 3/17/20)

A. ADA-covered employers (employers with 15 or more employees) may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19. [Symptoms can include 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.

Can an employer ask all employees who will be physically entering the workplace if they have COVID-19 or symptoms associated with COVID-19, or ask if they have been tested for COVID-19? ([EEOC](#), 3/27/20)

A. Yes. Employers may ask all employees who will be physically entering the workplace if they have COVID-19, or symptoms associated with COVID-19, or ask if they have been tested for COVID-19. Symptoms associated with COVID-19 include, for example, cough, sore throat, fever, chills, and shortness of breath.

An employer may exclude those with COVID-19, or symptoms associated with COVID-19, from the workplace because their presence would pose a direct threat to health or safety. For those employees who are teleworking, however, they are not physically interacting with coworkers, and therefore the employer would generally not be permitted to ask these questions.

If an employee refuses to answer questions about whether he or she has COVID-19, or symptoms associated with COVID-19, or has been tested for COVID-19, [the employer may bar an employee from physical presence in the workplace](#). To gain the cooperation of employees, however, employers may wish to ask the reasons for the employee's refusal. The employer may be able to provide information or reassurance that he or she is taking these steps to ensure the safety of everyone in the workplace. Sometimes, employees are reluctant to provide medical information because they fear an employer may widely spread such personal medical information throughout the workplace. However, the ADA prohibits such broad disclosures.

May an employer ask only one employee – as opposed to asking all employees – questions designed to determine if he or she has COVID-19? ([EEOC](#), 3/27/20)

A. If an employer wishes to ask only a particular employee to answer such questions, the ADA requires the employer to have a reasonable belief based on objective evidence that this person might have the disease. So, it is important for the employer to consider why it wishes to take these actions regarding this particular employee. For example, if an employer notices that an employee has a persistent, hacking cough, it could ask about the cough, whether the employee has been to a doctor, and whether the employee knows if he or she has or might have COVID-19. The reason these types of questions are permissible now is that this type of cough is one of the symptoms associated with COVID-19. On the other hand, if an employer notices an employee seems distracted, then that would be an insufficient basis to ask whether the employee has COVID-19.

May an employer ask an employee who is physically coming into the workplace whether he or she has family members who have COVID-19 or symptoms associated with COVID-19? ([EEOC](#), 3/27/20)

A. From a public health perspective, asking an employee only about contact with family members unnecessarily limits the possible extent of an employee's potential exposure to COVID-19. A better question from a public health and workforce management perspective is whether an individual has had contact with anyone who the employee knows has been diagnosed with COVID-19, or who may have symptoms associated with the disease. From the U.S. Equal Employment Opportunity Commission's (EEOC's) perspective, this general question is more sound. The Genetic Information Nondiscrimination Act prohibits employers from asking employees medical questions about family members.

When an employee returns from travel during a pandemic, must an employer wait until the employee develops COVID-19 symptoms to ask questions about exposure to COVID-19 during the trip? ([EEOC](#), 3/21/20)

A. No. These would not be disability-related inquiries. Employers may follow the advice of [CDC](#) and state/local public health authorities regarding information needed to permit an employee's return to the workplace after visiting a specified location, whether for business or personal reasons.

May an employer require an employee who is out sick to provide a doctor's note, submit to a medical exam, or remain symptom-free for a specified amount of time before returning to work? ([DOL](#), 7/8/20)

A. Yes. However, employers should consider that during a pandemic, health care resources may be overwhelmed, and it may be difficult for employees to get appointments with doctors or health care providers to verify they are well or no longer contagious.

During a pandemic health crisis, under the ADA, an employer would be allowed to require a doctor's note, a medical examination, or a time period during which the employee has been symptom free before it allows the employee to return to work. Specifically, an employer may require the above actions of an employee where it has a reasonable belief – based on objective evidence – that the employee's present medical condition would:

- Impair his or her ability to perform **essential job functions** (i.e., fundamental job duties) with or without reasonable accommodation, or
- Pose a **direct threat** (i.e., significant risk of substantial harm that cannot be reduced or eliminated by reasonable accommodation) to safety in the workplace.

In situations in which an employee's leave is covered by the Family and Medical Leave Act, the employer may have a uniformly applied policy or practice that requires all similarly situated employees to obtain and present certification from the employee's health care provider that the employee is able to resume work. Employers are required to notify employees in advance if the employer will require a [fitness-for-duty certification](#) to return to work. If state or local law or the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied. Employers should be aware that fitness-for-duty certifications may be difficult to obtain during a pandemic.

As a best practice, and in advance of having some or all employees return to the workplace, are there ways for an employer to invite employees to request flexibility in work arrangements? ([EEOC](#), 6/11/20)

A. Yes. The ADA and the Rehabilitation Act permit employers to make information available in advance to all employees about whom to contact – if they wish – to request accommodation for a disability they may need upon return to the workplace, even if no date has been announced for their return. If requests are received in advance, the employer may begin the [interactive process](#). An employer may choose to include in such a notice all the CDC-listed medical conditions that may place people at higher risk of serious illness if they contract COVID-19, provide instructions about whom to contact, and explain that the employer is willing to consider on a case-by-case basis any requests from employees who have these or other medical conditions.

An employer also may send a general notice to all employees who are designated for returning to the workplace, noting that the employer is willing to consider requests for accommodation or flexibilities on an individualized basis. The employer should specify if the contacts differ depending on the reason for the request – for

example, if the office or person to contact is different for employees with disabilities or pregnant workers than for employees whose request is based on age or child care responsibilities.

Regardless of the approach, however, employers should ensure that whoever receives inquiries knows how to handle them consistent with the different federal employment nondiscrimination laws that may apply, for instance, with respect to accommodations due to a medical condition, a religious belief, or pregnancy.

INFECTION CONTROL METHODS AND SAFETY STANDARDS

★ Be aware that local orders or declarations may also impact infection control methods and safety standards.

What should health care employers do to protect health care workers from exposure to SARS-CoV-2? ([OSHA](#), 7/7/20)

A. [CDC](#) and the [Occupational Safety and Health Administration \(OSHA\)](#) are providing extensive guidance for infection prevention in health care settings. OSHA's guidance materials include:

- The [Healthcare section](#) of the [COVID-19 Safety and Health Topics page](#), and
- The high- and very-high-exposure risk sections of the [Guidance on Preparing Workplaces for COVID-19](#) booklet ([Spanish](#)).

Both agencies' guidance materials describe how health care employers should develop and implement infection control and preparedness plans and communicate those plans to workers through effective training. Employers should assess the risks and follow the [hierarchy of controls](#) for worker protection:

- Engineering controls (e.g., airborne infection isolation rooms),
- Administrative controls (e.g., cohorting patients),
- Work practices (e.g., handwashing, disinfecting surfaces), and
- Appropriate personal protective equipment (PPE) (e.g., gloves, respirators, face shields or other eye protection, and gowns).

During a pandemic, may an employer require its employees to adopt infection-control practices, such as regular hand washing, at the workplace? ([EEOC](#), 3/21/20)

A. Yes. Requiring infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal does not implicate the ADA.

May an employer require its employees to wear personal protective equipment, like masks, designed to reduce the transmission of COVID-19? ([EEOC](#), 4/17/20)

A. Generally, yes. An employer may require employees to wear personal protective equipment during a pandemic.

However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., nonlatex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.

In addition to EEOC's guidance, health care employers should also be aware of the following:

- The Texas Medical Board (TMB) has adopted [emergency rule 190.8\(2\)\(U\)](#) as a result of [Governor Abbott's Executive Order GA-19](#). The emergency rule provides, among other things, the minimum standards for safe practice related to COVID-19 for all physicians providing patient care or engaging in an in-person patient encounter. One minimum standard, for instance, requires that the physician, the physician's delegate, and the patient must wear a mask when the physician and/or delegate are within less than 6 feet from the patient. For more information on the emergency rule, see TMA's [Frequently Asked Questions](#) and [white paper](#), as well as TMB's [Frequently Asked Questions](#).
- [CDC's guidance](#) for health care personnel returning to work after having confirmed or suspected COVID-19 recommends that health care personnel should wear a face mask for source control at all times while in the health care facility until all symptoms are completely resolved or at baseline. A face mask instead of a cloth face covering should be used by these health care personnel for source control during this period while in the facility. After this period, these health care personnel should revert to their facility policy regarding [universal source control](#) during the pandemic.
- [OSHA](#) recommends that, during the ongoing pandemic and associated community spread of COVID-19, all workers wear face coverings to prevent the spread of their respiratory droplets. Because of other exposures in health care settings, health care workers may need to wear surgical masks to prevent or reduce the risk of this transmission while also protecting themselves from exposure. OSHA recommends that health care workers with exposure to suspected or confirmed COVID-19 patients wear PPE ensembles that include N95 or better filtering facepiece respirators. For health care workers providing patient care to other patients in communities with ongoing community transmission, surgical masks can be used in conjunction with face shields or goggles to protect the wearer from exposure to others' respiratory droplets and splashes or sprays of other body fluids that can spread diseases. For some activities, including aerosol-generating procedures, health care workers likely need N95 or better filtering facepiece respirators. N95 or better respirators should be used in accordance with a [respiratory protection program](#).
- PPE shortages are currently posing a tremendous challenge to the health care system. CDC ([as well as DSHS](#)) has [published guidance](#) for health care professionals regarding optimization strategies for use when PPE supplies are stressed, running low, or absent.
- Be aware that state and local orders or declarations may also impact employee usage of PPE in certain settings. Additionally, Governor Abbott has [issued an executive order](#) requiring that all individuals in Texas wear a face covering, with certain exceptions, when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, wherever it is not feasible to maintain 6 feet of social distancing from another person not in the same household.

During a pandemic, may an employer take its employees' temperatures or conduct other health screenings? ([EEOC](#), 3/17/20; also see [OSHA](#), 6/2020)

A. Because CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, ADA-covered employers (employers with 15 or more employees) may measure employees' body temperature. If an employee refuses to permit the employer to take his or her temperature, [the employer may bar an employee from physical presence in the workplace](#). In many workplaces, temperature screening efforts are likely to be most beneficial when conducted at home by individual workers, with employers' temperature screening plans relying on workers' self-monitoring and staying home if they have a fever or other signs or symptoms of illness, rather than employers directly measuring temperatures after workers arrive at the work site.

As with all medical information, the fact that an employee had a fever or other symptoms would be subject to ADA confidentiality requirements.

Employers need not make a record of temperatures when they screen workers, but instead may acknowledge a temperature reading in real time. If an employer chooses to create records of this information, those records might qualify as medical records under the Access to Employee Exposure and Medical Records standard ([29 CFR § 1910.1020](#)) if made or maintained by a physician, nurse, or other health care personnel or technician. The employer would then be required to retain these records for the duration of each worker's employment plus 30 years and follow confidentiality requirements.

Additionally, personnel administering in-person temperature checks, or other in-person health screening must be protected from exposure to sources of SARS-CoV-2 by standard and appropriate transmission-based precautions and should follow the hierarchy of controls, including appropriate engineering and administrative controls, safe work practices, and PPE.

Regardless of whether or how employers ultimately decide to implement temperature checks or other health screening measures, they should act cautiously on results. Employers should not presume that individuals who do not have a fever or report experiencing other symptoms of COVID-19 do not have SARS-CoV-2. Employers should continue to implement the basic hygiene, social distancing, workplace controls and flexibilities, and employee

training described in this guidance in ways that reflect the risk of community spread of COVID-19, including from asymptomatic and presymptomatic individuals, in the geographical area where the workplace is located.

May an ADA-covered employer (employers with 15 or more employees) require employees to stay home or send employees home if they display symptoms of COVID-19 during a pandemic? ([EEOC](#), 3/17/20)

A. Yes. 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.

May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace? ([EEOC](#), 4/23/20; also see [OSHA](#), 6/2020)

A. The ADA requires that any mandatory medical test of employees be "job related and consistent with business necessity." Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore, an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

Consistent with the ADA standard, employers should ensure the tests are accurate and reliable. For example, employers may review [guidance](#) from FDA about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities, and check for updates. Employers may wish to consider the incidence of false positives or false negatives associated with a particular test. Finally, note that accurate testing reveals only if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

Based on guidance from medical and public health authorities, employers should still require – to the greatest extent possible – that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

Finally, personnel administering COVID-19 testing or other in-person health screening must be protected from exposure to sources of SARS-CoV-2 by standard and appropriate transmission-based precautions and should

follow the hierarchy of controls, including appropriate engineering and administrative controls, safe work practices, and PPE.

May an employer require antibody testing before permitting employees to reenter the workplace? ([EEOC](#), 6/17/20)

A. No. An antibody test constitutes a medical examination under the ADA. In light of CDC's [interim guidelines](#) that antibody test results "should not be used to make decisions about returning persons to the workplace," an antibody test at this time does not meet the ADA's "job related and consistent with business necessity" standard for medical examinations or inquiries for current employees. Therefore, requiring antibody testing before allowing employees to reenter the workplace is not allowed under the ADA. Please note that an antibody test is different from a test to determine if someone has an active case of COVID-19 (i.e., a viral test).

ADDITIONAL RESOURCES

Centers for Disease Control and Prevention

[Guidance for U.S. Healthcare Facilities about Coronavirus \(COVID-19\)](#)

[Infection Control Guidance for Healthcare Professionals about Coronavirus \(COVID-19\)](#)

U.S. Department of Commerce

[Guide to Enterprise Telework, Remote Access and Bring Your Own Device \(BYOD\) Security](#)

U.S. Department of Labor

[COVID-19 and the American Workplace](#)

Equal Employment Opportunity Commission

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

Occupational Safety and Health Administration

[COVID-19 – Control and Prevention for Healthcare Workers and Employers](#)

[Guidance on Returning to Work](#)

Texas Department of Insurance – Workers' Compensation

[TDI Division of Workers' Compensation Coronavirus Resources](#)

U.S. Department of Health and Human Services

[HIPAA Privacy and COVID-19](#)

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