

## EEOC Provides Coronavirus Guidance for Employers

Patrick J. Harvey, Esq. and Julie A. Aquino, Esq.

The Equal Employment Opportunity Commission (EEOC) recently posted a guidance regarding preparedness in the workplace for Coronavirus (COVID-19). The guidance clarifies the ability of employers to take concrete steps in response to COVID-19, such as, among others, instructing employees with flu-like symptoms to stay home from work. See the full guidance [here](#).

The EEOC explains that while the Americans with Disabilities Act (“ADA”) still applies during a pandemic, the ADA should not interfere with employers following COVID-19 prevention steps that are set out by the Federal Center for Disease Control (“CDC”) and state and local public health advisories when COVID-19 poses a direct threat to public health and safety. The EEOC guidance answers the following questions that are being asked by employers:

1. May employers send employees home if they display flu-like symptoms?

Yes, the Centers for Disease Control and Prevention (“CDC”) states that employees who become ill with flu-like symptoms at work during a pandemic should leave the work place. Such action would be permitted under the ADA if the illness were serious enough to pose a direct threat, or alternatively, is not a disability-related action if the illness is simply akin to seasonal flu.

2. How much information may employers request from employees who report feeling ill at work or who call in sick, during a pandemic?

Employers may ask such employees if they are experiencing flu-like symptoms, such as fever or chills **and** a cough or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

3. May employers take employees’ temperatures to determine if they have a fever?

Generally, measuring body temperature is a medical exam. If pandemic flu symptoms become more severe than the seasonal flu, or if pandemic flu becomes widespread in the community as assessed by state or local health authorities or the CDC, then employers may measure employees’ body temperature. However, employers should be aware that some people with flu do not have a fever.

4. When an employee returns from travel during a pandemic, must an employer wait until the employee develops flu symptoms to ask questions about exposure to pandemic flu?

No. If the CDC or state or local public health officials recommend that people who visit specified locations remain at home for several days until it is clear they do not have pandemic flu symptoms, an employer may ask whether employees are returning from these locations, even if the travel was personal. These are not disability related inquiries.

5. May employers ask employees who do not have flu symptoms to disclose whether they have a condition that CDC says would make them vulnerable to flu complications?

No. Making inquiries or requiring medical exams of employees *without* symptoms is prohibited by the ADA. If a flu pandemic becomes more severe or serious according to the assessment of local, state or federal public health officials, employers may have sufficient objective information to reasonably conclude that employees will face a direct threat if they contract pandemic flu. Only in this circumstance may employers make inquiries or require medical exams of asymptomatic employees to identify those at higher risk of flu complications.

6. May employers require its employees to adopt infection-control practices, such as regular hand washing in the workplace?

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.

7. May employers require all of its employees to take the flu vaccine?

No. An employee may be entitled to an exemption from a mandatory vaccination requirement based on a disability that prevents him from taking the flu vaccine, or due to a sincerely held religious belief, practice, or observance that prevents him or her from taking the vaccine. Generally, employers should consider simply encouraging employees to get the flu vaccine rather than requiring them to take it.

8. May an employer ask an employee why he or she has been absent from work?

Yes. Asking why an individual did not report to work is not a disability-related inquiry. An employer is always entitled to know why an employee has not reported for work.

9. May employers encourage employees to telework as an infection-control strategy?

Yes. However, the guidance document is silent as to requests by employees to telework where the essential functions of the position cannot be performed remotely.

10. May employers require employees who have been away from the workplace during a pandemic to provide a doctor's note certifying fitness to return to work?

Yes, employers may require such fitness for duty certifications during a pandemic. As a practical matter, however, doctors and other health care professionals may be too busy during a pandemic outbreak to provide fitness-for-duty documentation. Therefore, employers may need to rely on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

If your municipality does not have a plan to prevent the spread of COVID-19, develop one now. Such a plan should be designed to prevent the spread of the virus in the workplace and to plan how to continue public services to the fullest extent possible if employee absenteeism develops, and what steps will be taken if any employees are confirmed to have the virus. Campbell Durrant attorneys will be speaking about COVID-19 preparedness in the workplace at the annual PELRAS conference, March 18-20, 2020. The PELRAS Coronavirus Essential Employer Strategies presentation will be posted on The League's website in the Online Training Library and provided to all PELRAS clients. Campbell Durrant attorneys are available to assist your Municipality in developing a plan regarding COVID-19 that involves many of the concrete steps listed above by the EEOC and to answer employment questions related to COVID-19.