



HR AFFILIATES

# COMPREHENSIVE FAQ'S FOR EMPLOYERS ON THE COVID-19 CORONAVIRUS

*Note: this document was updated on March 18, 2020 to reflect updated guidelines from the EEOC and changes to the Kentucky Unemployment system.*

## BACKGROUND

A new virus first identified in Wuhan, China in late 2019 has been spreading across the globe and is now in the United States. The new coronavirus, COVID-19, is not a flu but a pneumonia-like infection. Coronaviruses, so called because of their crownlike shape, range from the common cold to SARS-CoV and 2012's MERS (Middle East Respiratory Syndrome). They differ from Avian (H1N1) influenza and swine flu.

It remains to be seen how severe the coronavirus will be in the U.S. and elsewhere, but countries worldwide are monitoring the situation closely and preparing for worst-case scenarios. One thing is certain – regardless of how severe the epidemic gets across the country, we face these possibilities:

1. Some health organizations monitoring the spread of the virus anticipate that as much to 40-50% of the American workforce will be affected by the flu during the season.
2. Even if it is not widespread severely across the country, it could severely affect your community, or your business. How many absent employees will it take before your operations feel the effect?
3. Regardless of whether or not the threat becomes real, it's only a matter of time before the threat is felt by everyone, and this will lead to panicked employees looking for answers. A little preparation now will allow you to have answers to those questions before they ask.

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## WHAT ARE THE SYMPTOMS OF THE CURRENT COVID-19 CORONAVIRUS?

The virus symptoms manifest as a mild to severe respiratory illness with fever, cough, and difficulty breathing. The Centers for Disease Control (CDC) believes at this time that symptoms may appear in as few as two days or as long as 14 days after exposure. Unfortunately, at this point there is no easy way to test for the COVID-19 coronavirus. A CDC-developed laboratory test kit to detect the COVID-19 coronavirus began shipping in February to select qualified U.S. and international laboratories.

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## HOW IS THE CURRENT COVID-19 CORONAVIRUS TRANSMITTED?

People can catch COVID-19 from others who have the virus. The disease can spread from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. These droplets also land on objects and surfaces around the person. Other people then catch COVID-19 by touching these



objects or surfaces, then touching their eyes, nose, or mouth. Therefore, it is important to stay more than 1 meter (3 feet) away from a person who is sick. The CDC recommends as much as 6 feet. It is possible to catch the virus from someone even before they have symptoms, but little is known about this aspect of the virus at this time.

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### **CAN THE VIRUS SPREAD FROM CONTACT WITH INFECTED SURFACES OR OBJECTS?**

It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.

## **Q&A FOR EMPLOYERS**

### **WORKPLACE SAFETY**

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#### **WHAT IF AN EMPLOYEE APPEARS SICK?**

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 extremely 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.

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#### **HOW MUCH INFORMATION MAY AN EMPLOYER REQUEST FROM AN EMPLOYEE WHO CALLS IN SICK, IN ORDER TO PROTECT THE REST OF ITS WORKFORCE DURING THE COVID-19 PANDEMIC?**

During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as 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.

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#### **CAN WE ASK AN EMPLOYEE TO STAY HOME OR LEAVE WORK IF THEY EXHIBIT SYMPTOMS OF THE COVID-19 CORONAVIRUS OR THE FLU?**

Yes, you are permitted to ask them to seek medical attention and get tested for COVID-19, and under most circumstances you can ask them to leave work. You can also require a statement from the physician that they are released to return to work. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

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## **CAN I TAKE AN EMPLOYEE'S TEMPERATURE AT WORK TO DETERMINE WHETHER THEY MIGHT BE INFECTED?**

The Americans with Disabilities Act (ADA) places restrictions on the inquiries that an employer can make into an employee's medical status, and the Equal Employment Opportunity Commission (EEOC) considers taking an employee's temperature to be a "medical examination" under the ADA. The ADA prohibits employers from requiring medical examinations and making disability-related inquiries 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.

Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

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## **WHAT ABOUT JOB APPLICANTS?**

According to the EEOC's recommendations distributed on March 18, 2020 the following considerations may be taken:

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### **IF AN EMPLOYER IS HIRING, MAY IT SCREEN APPLICANTS FOR SYMPTOMS OF COVID-19?**

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability. However, you may wish to consider alternative options to not hiring the candidate, such as delayed start date or remote working opportunities.

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### **MAY AN EMPLOYER TAKE AN APPLICANT'S TEMPERATURE AS PART OF A POST-OFFER, PRE-EMPLOYMENT MEDICAL EXAM?**

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

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### **MAY AN EMPLOYER DELAY THE START DATE OF AN APPLICANT WHO HAS COVID-19 OR SYMPTOMS ASSOCIATED WITH IT?**

Yes, According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

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### **MAY AN EMPLOYER WITHDRAW A JOB OFFER WHEN IT NEEDS THE APPLICANT TO START IMMEDIATELY BUT THE INDIVIDUAL HAS COVID-19 OR SYMPTOMS OF IT?**

Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer. You should consider whether or not a delayed start date or remote working arrangement can be developed.

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## **AN EMPLOYEE OF OURS HAS TESTED POSITIVE FOR COVID-19. WHAT SHOULD WE DO?**

You should send home all employees who worked closely with that employee 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 employee 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. If you work in a shared office building or area, you should inform building management so they can take whatever precautions they deem necessary.

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## **ONE OF OUR EMPLOYEES HAS A SUSPECTED BUT UNCONFIRMED CASE OF COVID-19. WHAT SHOULD WE DO?**

Take the same precautions as noted above. Treat the situation as if the suspected case is a confirmed case for purposes of sending home potentially infected employees. Communicate with your affected workers to let them know that an employee has not tested positive for the virus but has been exhibiting symptoms that lead you to believe a positive diagnosis is possible.

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## **HOW CAN WE DISTINGUISH BETWEEN A “SUSPECTED BUT UNCONFIRMED” CASE OF COVID-19 AND A TYPICAL ILLNESS?**

There is no easy way for you to make this determination, but you should let logic guide your thinking. The kinds of indicators that will lead you to conclude an illness could be a suspected but unconfirmed case of COVID-19 include whether that employee traveled to a restricted area that is under a Level 2, 3, or 4 Travel Advisory according to the U.S. State Department, whether that employee was exposed to someone who traveled to one of those areas, or similar facts. You should err on the side of caution but not panic.

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## **ONE OF OUR EMPLOYEES HAS BEEN EXPOSED TO THE VIRUS BUT ONLY FOUND OUT AFTER THEY HAD INTERACTED WITH CLIENTS AND CUSTOMERS. WHAT SHOULD WE DO?**

Take the same precautions as noted above with respect to coworkers, treating the situation as if the exposed employee has a confirmed case of COVID-19 and sending home potentially infected employees that he came into contact with. As for third parties, you should communicate with customers and vendors that came into close contact with the employee to let them know about the potential of a suspected case.

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## **IF WE LEARN OR SUSPECT THAT ONE OF OUR EMPLOYEES HAS COVID-19, DO WE HAVE A RESPONSIBILITY TO REPORT THIS INFORMATION TO THE CDC?**

There is no obligation to report a suspected or confirmed case of COVID-19 to the CDC. The healthcare provider that receives the confirmation of a positive test result is a mandatory reporter who will handle that responsibility.

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### **WHAT ABOUT TO OSHA?**

Common flu and colds are exempt from recordkeeping requirements, but Hepatitis A and tuberculosis contracted at the workplace must be recorded. At this time, OSHA has not made a statement regarding Coronavirus specifically, so one may assume it will at this time be treated the same as the flu.

Clearly, the issue will be in determining origin, in spite of an employee's claim. While one could assume that an individual who develops Coronavirus after exposure to a coworker with the virus did in fact contract it at work from that coworker, there will be no way to confirm that the virus was contracted at work rather than church, the grocery store, or a restaurant.

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## WHAT STEPS CAN WE TAKE NOW TO MINIMIZE RISK OF TRANSMISSION?

Repeatedly, creatively, and aggressively encourage employees and others to take the same steps they should be taking to avoid the seasonal flu, which is already one of the worst flus in the last 10 years. For the annual influenza, SARS, avian flu, swine flu, and the COVID-19 virus, the best way to prevent infection is to avoid exposure. Perhaps the most important message employers can give to employees is to stay home if sick. In addition, instruct your workers to take the same actions they would to avoid the flu. For example:

- Wash your hands often with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Avoid close contact with people who are sick.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.
- Ensure that employees have ample facilities to wash their hands, including tepid water and soap, and that third-party cleaning/custodial schedules are accelerated.
- Teleconference in lieu of meeting in person if available.
- Educate your employees about COVID-19, its symptoms, and the potential health concerns associated with any travel at this time.
- Have a single point of contact for employees for all concerns that arise relating to health and safety.
- Wear personal protective equipment, such as gloves and goggles, if touching or working bloodborne pathogens.
- Follow updates from the CDC and the World Health Organization (WHO) regarding additional precautions.

As employer, you should consider stocking up on tissues, soap, wastebaskets, hand sanitizer, disinfectant, and disposable towels. In addition to securing a service or custodial employee responsible for housekeeping, encourage employees to do regular cleaning of hard surfaces throughout the day.

*You may reference the Occupational Safety and Health Administration's (OSHA's) [Guidance on Preparing Workplaces for an Influenza Pandemic](#) for additional information on preparing for an outbreak. The CDC has also issued posters available for free download in multiple languages on its website that instruct employees on healthy workplace habits that will help to prevent the spread of the disease. ( Available at <https://www.cdc.gov/handwashing/>).*

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## CAN AN EMPLOYEE REFUSE TO COME TO WORK BECAUSE OF FEAR OF INFECTION?

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.

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### **IF WE SEND EMPLOYEES HOME FROM WORK, -- OR IF WE CLOSE DOWN OPERATIONS FOR A PERIOD -- WILL THIS TIME BE PAID OR UNPAID?**

You can guarantee that you will be asked this question, and you must certainly develop a plan to determine work and wage continuation. For non-exempt employees, time away from work can be unpaid and must only follow your paid leave policies, such as your sick leave, PTO, vacation policies, etc.

For exempt employees, you must also follow your paid leave policies. In addition, you must remember the following:

- Use of Paid Time Off can be in partial day increments because it does not reduce the weekly salary.
- If time away from work is required by the employer and paid time off is not otherwise provided for by company policy, the time away from work can be unpaid as long as in full-week periods *and* as long as the employee is not doing any work during that time, from home or elsewhere, including *phone calls and emails*.
- If time off is voluntary and initiated by the employee and not covered by any Paid Time Off policy, time away from work can be unpaid as long as it is in full day increments, as long as the employee is not doing any work during that time, from home or elsewhere, including *phone calls and emails*.

*It is advisable to give very careful consideration before ever reducing the wages of exempt salaried personnel. For exempt and non-exempt employees, you can always grant additional paid time away from work.*

The most important thing to consider is to develop a plan and to be consistent with this plan.

Also, note that there is currently consideration to make paid leave a federal requirement for employees who miss work due to this virus. We will keep you updated should this become a requirement.

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### **CAN EMPLOYEES RECEIVE UNEMPLOYMENT COMPENSATION IF THERE IS NO WORK AVAILABLE TO THEM?**

The U. S. Department of Labor (DOL) issued guidance permitting states “significant flexibility” in amending the guidelines for which an employee may receive benefits due to the effects of COVID-19.” This DOL guidance provides that UI benefits may be available for employees:

- (1) When an employer temporarily ceases operations due to COVID-19, preventing employees from coming to work;
- (2) An individual is quarantined with the expectation of returning to work after the quarantine is over; and

(3) An individual leaves employment due to a risk of exposure or infection or to care for a family member.

In addition:

- (1) Federal law does not require an employee to quit in order to receive benefits due to the impact of COVID-19, and
- (2) If an employee on leave is receiving payment for their leave, the employee is not deemed unemployed and therefore not eligible for unemployment insurance.

Information regarding eligibility for benefits and how benefits will be treated for charging an employer's UI account for benefits paid out, is changing day to day and is different state to state. It is important that employers refer to their individual state unemployment office for guidance.

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#### IN KENTUCKY:

Two key changes have been made to Kentucky's unemployment insurance rules:

1. Under current law, an individual who has experienced job loss must wait seven days before filing a claim. The state is now waiving that wait period.
2. Current law also requires individuals who have lost a job to seek employment while receiving benefits. That requirement is temporarily waived.

In order to better meet the influx of requests for unemployment, UI claims will be filed temporarily on a specific day of the week according to last name:

- Wednesday, March 18 – A through I
- Thursday, March 19 – J – R
- Friday, March 20 S through Z
- Saturday, March 21 -- anyone who missed their scheduled day

It is not known at this point if the scheduled days will continue for requests. Employees should be encouraged to go to the [Kentucky Career Center](#) website for more information. Additionally, employees are being asked to file online or via phone and not go to the career center offices.

Kentucky employers and employees are encouraged to go to [www.kycovid.19.gov](http://www.kycovid.19.gov) to remain up to date on all COVID-19 issues affecting the commonwealth.

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#### **CAN EMPLOYEES CLAIM THE CORONAVIRUS AS A WORKERS' COMPENSATION INJURY?**

Workers' compensation laws vary greatly from state to state. You should contact your workers' compensation carrier now to see what their response to the Coronavirus virus is going to be. Since it is going to be difficult if not impossible to determine the origin for an individual's contraction of Coronavirus, it is unlikely that workers' compensation will cover treatment for the virus unless a direct correlation can be made regarding transmission of the virus.

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#### **CAN EMPLOYERS IN THE UNITED STATES REFUSE AN EMPLOYEE'S REQUEST TO WEAR A MEDICAL MASK OR RESPIRATOR?**



Yes, under most circumstances. Under the OSHA respiratory protection standard, 29 C.F.R. 1910.134, which covers the use of most safety masks in the workplace, a respirator must be provided to employees only “when such equipment is necessary to protect the health of such employees.” Likewise, OSHA rules provide guidance on when a respirator is not required: “an employer may provide respirators at the request of employees or permit employees to use their own respirators, if the employer determines that such respirator use will not in itself create a hazard” (29 C.F.R. 1910.134(c)(2)). In almost all work situations, however, there is no currently recognized health or safety hazard – even when employees work near other people and thus there is no need for a mask or respirator.

The WHO has stated that people only need to wear face masks if they are treating someone who is infected with the COVID-19 coronavirus. The WHO has also said that wearing masks may create a false sense of security among the general public. Doctors agree that the best defense against the COVID-19 coronavirus and influenza is simply washing your hands. Thus, the consensus is that there are more appropriate measures of defense than wearing a surgical mask or respirator.

## TRAVEL

### **CAN WE PROHIBIT AN EMPLOYEE FROM TRAVELING TO A NON-RESTRICTED AREA ON THEIR PERSONAL TIME?**

You generally cannot prohibit otherwise legal activity, such as travel abroad by an employee. While a federal court of appeals recently held that it is not necessarily a violation of the ADA to terminate an employee who refuses to cancel personal travel to an area of the world with a high risk of exposure to a deadly disease, you still could risk legal exposure, reduced employee morale, and negative publicity if you do so. This includes pregnant employees or those with medical conditions. However, you should educate your employees before they engage in travel to risky environments to try and work out a solution, and you can – and should – monitor those employees returning from such travel for signs of illness.

### **WHAT SHOULD I DO IF AN EMPLOYEE HAS RECENTLY TRAVELED TO AN AFFECTED AREA OR OTHERWISE MAY HAVE BEEN EXPOSED TO THE COVID-19 CORONAVIRUS?**

As noted above, the 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.

## REMOTE WORK

### **SHOULD WE INSTITUTE A TEMPORARY REMOTE WORK POLICY IN LIGHT OF THE COVID-19 CORONAVIRUS OUTBREAK?**

Whether your company implements a remote work policy is entirely dependent on your organization’s circumstances and the area of the country where your workers reside. You may not want to introduce a new system in place if you have had not yet had time to test and develop your remote work capabilities. On the other hand, if you have established protocols in place, this could be a good opportunity to leverage them. Regardless of what you



choose to do, you should make your decision based on objective evidence and not emotion or fear. Make sure your decision is educated and intentional, not reactionary and spur-of-the-moment.

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## WHAT CAN WE DO TO PREPARE FOR A POSSIBLE REMOTE WORK SCENARIO?

There are a number of things you should do today to prepare for the possibility that your workers will need to operate remotely for a period of time.

- ✓ Take an inventory of the types of equipment your workers would need to get their job done and ensure they have access to them. This could include laptops, desktop computers, monitors, phones, printers, chargers, office supplies, and similar materials.
- ✓ Encourage your employees to prepare for the possibility of an immediate instruction to work at home. They may want to develop a “ready bag” that they take home with them at the end of each day that would allow them to begin working remotely at a moment’s notice. This would obviously include laptops, smartphones, and other related technology, but could also include physical items (such as binders, documents, materials).
- ✓ Make sure you consider and clearly communicate with your workers about which physical items are acceptable to be taken from the workplace and which need to stay in your location at all times.
- ✓ You might want to take the time now to digitize any relevant physical materials to make remote working easier.
- ✓ You will also want to communicate with your workforce about whether they can or should take digital photos of physical calendars, whiteboards, Kanban boards with stickie notes, or similar items, or whether they are prohibited from doing so.
- ✓ But perhaps the most important thing you should do is take the time to develop a remote work policy if you do not have one in place, or review and update your existing policy as it relates to this specific situation.

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## ALTERNATIVES TO REMOTE WORK WHEN REMOTE WORK IS NOT POSSIBLE

Your organization may not lend itself to remote work, or perhaps not for all employees. Employees who must work with machinery within an organization, for example, do not have the opportunity to do so remotely.

1. Flexible Work Schedules: Identify shift changes that may permit fewer employees to be in the facility at one time to limit face-to-face exposure. There are many positions that simply cannot be done remotely, so consider adding additional shifts or staggering shifts so that fewer employees are on site at a time.
2. Identify a Source for Temporary Workers : If your business is one that can utilize temporary workers, identify a source for those workers now so that you will be ready to call them in if the time comes. Develop a relationship with an agency that will be familiar with your needs so that there will be less ramp up time when you need workers on short notice.

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## HOW SHOULD WE COMMUNICATE THE PLAN FOR OUR EMPLOYEES?

Update your Business Interruption Plan, assuming you have one in place. If you don’t already have one, now is a good time to develop one. Either way, you want to be certain that the plan is current and has special considerations for the spread of contagious disease.

- A. Confirm that all essential business functions have been cross-trained so that more than one individual in the company knows how to perform them.
- B. Identify which operations are critical and which may be temporarily shut down if employees and resources need to be realigned temporarily.
- C. Determine your key suppliers and resources and maintain communication with them to stay current with their business continuity so that you can anticipate a loss or delay in services before it happens.
- D. Audit each employee's information to be certain contact information is current, including emergency contact information.
- E. Address the questions employees will ask regarding unscheduled and possibly considerable absence for their own illness and for the care of ill dependent or for the care of children who have been dismissed from schools that have chosen to close due to the pandemic crisis. This is going to include walking a balancing act between keeping a workplace healthy and upholding attendance requirements. However, if the pandemic reaches the proportions some are predicting, getting a little slack on attendance will be a small price for keeping the rest of the workplace at work.
- F. Establish a process to communicate information to workers and business partners on your pandemic illness response plans and the latest virus information.

For additional information please check out the following articles and websites:

<https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

<https://www.osha.gov/SLTC/covid-19/>

<https://hbr.org/2020/03/8-questions-employers-should-ask-about-coronavirus>

[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)

*Data Source Includes: "Comprehensive and Updated FAQs For Employers On the COVID-19 Coronavirus"*

<https://www.fisherphillips.com/resources-alerts-comprehensive-faqs-for-employers-on-the-covid>

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