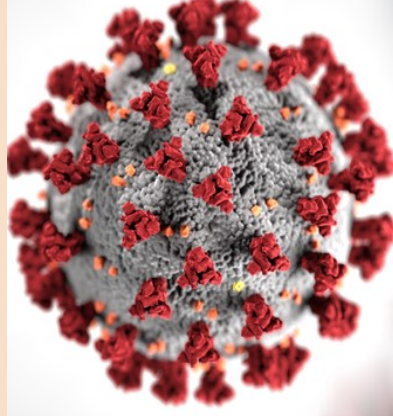


WORKPLACE SAFETY PRECAUTIONS DURING THE CORONAVIRUS OUTBREAK



COVID-19
CORONAVIRUS DISEASE 2019

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Any time there is a widespread virus outbreak, OSHA advises employers to identify risk levels in workplace settings and implement appropriate response measures and encouraging employees who are ill to stay home. In addition, employers should reduce the frequency, proximity and duration of contact between people (both employees and customers) to reduce the opportunity for spreading a virus. OSHA has suggested the following precautions be implemented in every workplace in the case of a pandemic:

- Encourage sick employees to stay home. Such absences may qualify for leave under the FMLA.
- Encourage employees to wash their hands frequently with soap and water, or use sanitizer if soap and water are not available.
- Encourage employees to avoid touching their nose, mouth and eyes.
- Provide customers and the public with tissues and trash receptacles, in addition to a place to wash or disinfect their hands.
- Encourage employees to cover their coughs and sneezes with tissues.
- Encourage employees to wash their hands or use hand sanitizer after they sneeze or cough.
- Avoid close contact with coworkers and customers (maintain separation of at least six feet).
- Avoid shaking hands and always wash hands after contact with others.
- Discourage employees from using other employees' phones, desks, or other work tools and equipment.
- Use email and phones to communicate as much as possible. Minimize meetings. When meetings are necessary, avoid close contact by keeping separation of at least six feet where possible.
- Ensure proper ventilation in the meeting room.
- Reduce all visitors as much as possible. If family visitors are allowed on site, the employer should consider restricting or eliminating that option during a pandemic.

In addition to addressing safety concerns that will arise during a pandemic, employers must avoid potential liability as they respond to the crisis. With respect to job applicants, the EEOC notes that the Americans with Disabilities Act (ADA) operates normally to preclude all disability-related questions and medical exams until after a conditional offer has been made.

With respect to current employees, a pandemic would provide sufficient justification to require employees to receive a medical exam to determine whether they are infected. Further, the ADA always allows voluntary medical exams, provided that an employer complies with the confidentiality requirements of the ADA. The EEOC has recommended a model survey that could be issued to all employees in preparation for a pandemic.

<https://www.eeoc.gov/facts/pandemic_flu.html>

It is possible that an infection could create a reasonable accommodation issue under the ADA if the sickness left the employee with a lingering condition that was disabling. It is more likely that those who are infected (or suspected) may be able to prove that they were regarded as being disabled. Practically speaking, infected employees must be treated the same as non-infected under the ADA, so long as they are physically and mentally able to effectively perform the essential functions of the job (with or without a reasonable accommodation). If an infected employee poses a direct threat to his or her own safety or the safety of others, however, the ADA does not prevent an employer from placing the employee on leave. An employer who has concerns about a threat posed by a specific employee should obtain solid medical authority regarding the risk posed by the employee before relying on health risks in making employment decisions.