



GLOBAL COLD CHAIN
ALLIANCE®

Sponsors

JAMISON
RefrigiWear[®]



Service Partners



JacksonLewis

Open For Business

Operationalizing Applicable COVID-19 Legal
Obligations And Guidance

Katharine C. Weber

7.29.2020

Cincinnati, Ohio

513.322.5033

Katharine.weber@jacksonlewis.com

© 2020 Jackson Lewis P.C.

Disclaimer

The material contained in this presentation was prepared by the law firm of Jackson Lewis P.C. for the attendees' own reference in connection with this seminar. Since the material and related discussions are informational and educational in nature and represent the speakers' own views, attendees should consult with counsel before taking any actions and should not consider these materials or related discussions to be legal or other advice. Professional advice should be obtained before attempting to address any legal situation or problem.

Strategically Located Throughout the Nation to Serve Employers' Labor and Employment Law Needs

61 Locations

950+ Attorneys





- Laws and Guidance That Apply
- Operationalizing Applicable Legal Obligations and Recommendations

Laws and Guidance Employers Must Consider



Federal and State Laws To Consider

Federal Laws

Occupational Safety and Health Act (OSHA)

Americans with Disabilities Act (ADA)

Title VII and other laws against national origin, age and other discrimination

Fair Labor Standards Act (FLSA) and state and local wage and hour laws

Section 7 of the National Labor Relations Act (NLRA)

Genetic Information Nondiscrimination Act (GINA)

Family and Medical Leave Act

Families First Coronavirus Response Act (FFCRA)

State Laws

Expansions Of FFCRA for All Employers

Paid Family Leave and Mini FMLA Laws

Paid Sick Leave Laws

Predictive Scheduling Laws

State And Local Executive Orders To Consider

- Business Opening Orders
- Mass Gathering Restrictions
- Social Distancing/Sanitation Protocols
- Mask Requirements
- Vulnerable Population Obligations
- Health Screening And Temperature Check Requirements
- Travel Orders And Recommendations
- Protocols When Employees Are Exposed To COVID-19, Have COVID-19 Related Symptoms Or Test Positive
- Obligation To Notify Local Health Department, Participate In Contact Tracing
- Posting Requirements

CDC and EEOC Guidance



A-Z Index
Search
Advanced Search



U.S. Equal Employment
Opportunity Commission

Search terms...

- About EEOC
- Employees & Job Applicants
- Employers / Small Business
- Federal Sector
- Contact Us
- Translate / Traducir

[Home](#) » Coronavirus and COVID-19

Coronavirus and COVID-19

We have established this page to consolidate relevant coronavirus and COVID-19 information and to answer questions from the public about the EEO laws and COVID-19.

- The EEOC's Office of Federal Operations (OFO) [issued instructions](#) on April 6, 2020, regarding the processing of federal sector EEO complaints covered by 29 CFR Part 1614. Those [instructions were revised on July 27, 2020](#), to allow the issuance of agency final actions. We do not intend this guidance to require any task that would increase risks to the health or safety of federal employees.
- EEOC Chair Janet Dhillon issued a [statement](#) about unlawful national origin and race discrimination against Asian Americans and people of Asian descent in the workplace during the pandemic.
- The EEOC posted information to inform the public [we are continuing to enforce the nation's employment non-discrimination laws](#) while ensuring that all of our activities are consistent with public health guidelines.
- The EEOC posted a question and answer document, [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#), last updated on June 17, 2020.
- The EEOC has provided guidance entitled [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act \[PDF version\]](#) that can help employers implement strategies to navigate the impact of COVID-19 in the workplace. This pandemic publication, written during the prior H1N1 outbreak, is still relevant today and identifies established ADA and Rehabilitation Act principles to answer questions frequently asked about the workplace during a pandemic. It was updated on March 19, 2020 to address examples and information regarding COVID-19; **the new information appears in bold.**
- To supplement these documents, the EEOC posted a pre-recorded webinar addressing questions arising under any of the Federal Equal Employment Opportunity Laws and the COVID-19 pandemic. The video can be [seen on YouTube](#) or in the video player below. A [transcript of the webinar](#) is also available.

Coronavirus Disease 2019

CDC is responding to the novel coronavirus outbreak.

[Learn More About COVID-19](#)



Cloth Face Coverings
Wear a face covering to help protect others in case you're infected but don't have symptoms.



Social Distancing
Limiting face-to-face contact with others is the best way to reduce the spread of COVID-19.



When to Wear Gloves
Use gloves when cleaning and disinfecting or providing care to someone who is sick.

Operationalizing Applicable Laws And Guidance



How Do You Operationalize All Those Recommendations And Requirements?

- Determine what is legally required and most appropriate to protect your employees and customers
 - CDC Guidance and EEOC Guidance
 - State and local executive orders in the states and cities where you have employees
 - The specific risks and realities of your workplace
- Create a written plan to comply with any applicable state re-opening orders
- Develop a process for temperature, symptom and exposure screening
- Develop a protocol for when employees:
 - Are diagnosed with COVID-19;
 - Have close contact with someone diagnosed with COVID-19; and
 - Engage in travel that is in violation of a state travel order or recommendation
- Understand your legal obligations and business risks when employees request accommodations related to COVID-19
- Educate your managers and then educate your other employees
- Monitor, Update, Repeat

Temperature, Symptom and Exposure Screening

- Self-assessment or employer-assessment?
- At home or at work?
- Daily or Single Use Certification/Questionnaire?
- Compensable or not compensable?
- CDC currently uses 100.4F or greater, but some states and local orders use a threshold of 99.5°F -100.4°F
- CDC current symptoms of COVID-19: chills or fever, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, diarrhea. Check to make sure your state or local ordinance does not identify other symptoms.
- The screen should inquire about exposures based on close contacts and travel

Protocol For How Long Must An Employee Remain Out Of The Workplace

Employee Has Symptoms Or Is Diagnosed With COVID-19

- Follow CDC Guidance for Discontinuance of Home Isolation
- Symptom Based Strategy
 - 10 days since onset of symptoms
 - 24 hours fever free without meds
 - Improvement in symptoms
- Test Based Strategy For Asymptomatic Individuals
 - 10 days since COVID-19 test
- Test Based Strategy For Symptomatic Individuals no longer recommended except for immunocompromised or to discontinue isolation earlier

Employee Has Close Contact With Someone Diagnosed With COVID-19

- 14 days from last exposure during contagious period
- Does not matter whether employee tests negative
- CDC's Critical Infrastructure Worker Guidance provides employer with option to allow exposed, but asymptomatic CIW to continue to work if certain procedures are followed
 - Employer temperature screening
 - Employee monitoring
 - Masking
 - Social distancing
 - Cleaning and disinfection

Employee Has Exposure Due To International Travel Or In Violation of State Travel Restriction

- 14 days from return from travel

Protocol For When Employee Is Diagnosed With COVID-19

- Offer support to the infected employee.
- Keep the infected employee out of work until no longer ill and no longer contagious.
- Consider communicating with local Department of Health.
- Identify close contacts, including co-workers, customers, vendors, or others.
- Determine whether infected employee and whether close contacts can work remotely.
- If employees are unable to work remotely, determine whether the company will pay them during the period they will be asked to remain away from workplace.
- Notify individuals determined to have had close contact, without disclosing the name of the employee, of the potential exposure and need to remain out of the workplace for 14 days from last exposure.
- Explain pay and other benefits available to both the infected employee and close contacts.
- Depending on the nature and scope of the infected employee's presence in the workplace, consider the need to temporarily close all or parts of the workplace while cleaning efforts are undertaken.
- Consider need to communicate with other employees at the worksite/in the area where the infected employee worked.

Should You Require COVID-19 Testing?

- EEOC permits molecular COVID-19 testing before employees enter a facility, EEOC
 - Requires that the tests be accurate and reliable
 - Suggests employers consider guidance from the FDA, CDC, and other public health authorities
- EEOC does not permit serological aka antibody testing
- A COVID-19 test is like a snapshot in time—just because an individual is negative today, they could be positive tomorrow
- Requiring COVID-19 testing may not be practical due to a shortage of available testing and due to the lag between the time tests are conducted and results are received
- If you are going to incorporate testing, make sure to check state laws and state and local COVID-19 orders regarding what is minimally required or prohibited in each jurisdiction

What COVID-19 Related Requests Should You Anticipate?

- “The government has advised that I stay home because I fall in a vulnerable population category.”
- “I’m caring for a parent who is old and could get sick” or “I live with someone who falls in a vulnerable population category.”
- “My child’s day care (or school) is closed and I need to take care of the child or help with schoolwork.”
- “My spouse has been exposed to COVID-19.”
- “My spouse has COVID-19.”
- “I have a medical condition and need to work from home as an accommodation.”
- “I have COVID-19.”
- “I’m afraid and I think you are opening too soon.”
- “I’m receiving more money staying on unemployment than if I come to work.”

Q&A

JacksonLewis

Thank **you.**