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EEOC and CDC Guidance for Handling Symptomatic and Asymptomatic Employees

In response to the current COVID-19 outbreak, the Equal Employment Opportunity Commission has cited its [2009 pandemic H1N1 flu guidance](#), which states that advising workers with symptoms to go home either (a) is not a disability-related action if the illness is akin to seasonal influenza or (b) is permitted under the Americans with Disabilities Act (ADA) if the illness is serious enough to pose a direct threat to the employee or coworkers. Further, the Centers for Disease Control and Prevention's (CDC) guidance advises that employees with symptoms of acute respiratory illness and a fever (greater than 100.4 degrees Fahrenheit or 37.8 degrees Celsius, using an oral thermometer) should stay home. Of course, employers should apply this type of policy uniformly and in a manner that does not discriminate based on any protected characteristic (e.g., national origin, gender, race, etc.).

This presumes an employee is symptomatic.

if the asymptomatic employee fits within certain categories established by the CDC's guidance (last updated on March 7, 2020), which categorizes employees based on (a) symptoms (i.e., symptomatic or asymptomatic) and (b) risk (i.e., High, Medium, Low, or No Identifiable, which takes into account both (1) travel destinations and (2) level and type of contact with symptomatic individuals).

Under the CDC guidance, employees who are asymptomatic may be excluded from the workplace, if they:

- have close contact with,
- sat on an aircraft within 6 feet (two airline seats) of, or
- live in the same household as, are an intimate partner of, or are caring for at home, **while consistently using recommended precautions** [see [here](#) and [here](#) for home care and home isolation precautions],” for a symptomatic individual with laboratory-confirmed COVID-19.

CDC defines “symptomatic” as subjective or measured fever, cough, or difficulty breathing. CDC defines “close contact” as:

a) being within approximately 6 feet (2 meters) of a COVID-19 case for a prolonged period of time; close contact can occur while caring for, living with, visiting, or sharing a healthcare waiting area or room with a COVID-19 case

– or –

b) having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on). There are different standards and CDC guidance for healthcare employees.

The CDC reminds employers that in order to prevent stigma and discrimination in the workplace, employers should use its guidance to determine the risk of COVID-19. Employers also should consider reviewing pertinent guidance from state and local public health authorities on appropriate responses to exposure risks, especially as situations change.



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Employers considering actions beyond the CDC's guidance (e.g., additional go home/work from home requirements) may want to consider the basis for those and consult with legal counsel.

The CDC has indicated that in general business settings (i.e., non-healthcare settings where individuals in the workplace are not at a greater risk of contracting COVID-19), employees may return to work at least 24 hours after no longer having or exhibiting (a) a fever (defined by the CDC as a temperature greater than 100.4° F or 37.8° C), (b) signs of a fever [what the CDC means is unclear], and (c) any other symptoms, without the aid of fever-reducing medicines (e.g., anything containing ibuprofen or acetaminophen) or other symptom-masking medicines (e.g., cough suppressants).

The return-to-work standards and time periods may be different for an individual with a confirmed COVID-19 diagnosis. Employers should consult the CDC's and other public health authorities' guidance.

Employers considering implementation of policies beyond the CDC's guidance (e.g., a longer "return to work" time period) should consider the basis for those and consult with legal counsel. An employer may want to meet with any returning employees to remind them to practice good respiratory etiquette and hand hygiene, avoid close contact with individuals who appear to be sick, and stay home if they begin to feel sick, for the health and safety of those employees and their coworkers, as well as the continued operations of the employer.

The CDC also has issued specific guidance for healthcare employees relating to risk assessment and management, which in certain respects provides more specific and expansive guidance regarding when to send healthcare workers home and when they may return to work based on their specific exposures or potential exposures. For example, based on certain categories of potential exposure, the guidance recommends sending a healthcare worker home for 14 days while monitoring for symptoms in coordination with state or local public health authorities. Healthcare employers should carefully review this guidance, consult with their state and/or local public health authorities, and consider changes to company policies regarding covered healthcare workers.

A doctor's note should not be a prerequisite for returning to work, according to the CDC. This is in part because this requirement would place a high burden on the healthcare system and healthcare provider offices and medical facilities may not be able to provide documentation in a timely fashion. If an employee's situation meets the ADA's "direct threat" standards, however, an employer may require a return-to-work doctor's note (see question 8). Though the CDC's guidance urges against requiring a return-to-work note, if the employee's illness is a "serious health condition" under the FMLA (see questions 21 and 22), the employer would be able to require a return-to-work note if the employer complies with the FMLA's guidelines for requiring such documentation, including, among others, notifying the employee in the initial determination that fitness-for-duty notes will be required and consistently applying the requirement to all FMLA leaves.