

# COVID-19 Legal Resources - Employment

**Dentons law firm has created a COVID-19 resource page and has highlighted a few employee/employer-related items below.**

For more information: <https://www.dentons.com/en/issues-and-opportunities/covid-19-coronavirus-hub>

**Guiding principle** - employers' general duty to maintain a safe workplace: Generally, when developing policies for the workplace in light of the COVID-19 outbreak, employers should be guided by the General Duty Clause of the Occupational Safety and Health Act, which requires employers to provide each employee a place of employment that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm." In some contexts, a specific OSHA standard could apply. Further, there could be specific requirements in states with OSHA-approved state plans.

**Do not discriminate:** Anti-discrimination laws require employers to treat similarly-situated employees equally. Employees should not be singled out for questioning about travel, exposure, symptoms, etc. based on citizenship, race, ethnicity, national origin or other categories protected under Title VII and state non-discrimination laws.

**Educate, communicate, coordinate:** Be vigilant, plan, do not panic. Inform and educate employees about prevention and health safety policies and plans before an outbreak or health emergency in order to minimize speculation, rumors, false information, concerns and fears. Such advance planning and education can also help quell workforce concerns if employees do contract COVID-19 by showing that the employer is prepared and taking appropriate precautions to protect employees. Develop or revisit an Outbreak/Pandemic Response plan, Business Continuity Plan, remote access capabilities, emergency communication procedures, and policies on leaves, employee travel, work arrangements, personal protective equipment and other well-workplace measures.

**Managing employees returning from travel to restricted areas:** For employees returning from high-risk countries, an employer may legally inquire about whether the travel was to high-risk areas and can require health screenings and working remotely temporarily. An employer may inquire if the employee traveled to a country designed by CDC or World Health Organization as high-risk or if employee was possibly exposed to a contagious illness while traveling there. An employer can require medical testing without violating the ADA, even if the employee is symptom-free if: a) the exam is job-related per business necessity; or b) the employee reasonably poses a direct threat to health or safety. An employer may also require the returning employee to work from home for the coronavirus incubation period (14 days) and return to work only if he or she is symptom-free.

**Laws applicable to employees who contract COVID-19:** Employees who become ill with COVID-19 should be instructed to stay home until they are symptom-free and cleared by a doctor to return to work). Laws that may apply to employees who contract COVID-19 (depending on employee headcount, amount of time worked by employee) include federal and state family leave laws (unpaid leave under federal Family Medical Leave Act for care of family member or employee's serious medical condition; unpaid leave under various state laws to care for family member with serious medical condition, sometimes employee's serious medical condition too; paid leave in a few states to care for a family member with

serious medical condition); temporary disability insurance (if illness was not work-related or caused by the job), worker's compensation (if illness results from work or working conditions), unemployment insurance (UI) (if employee hours are reduced or employer shuts down); a few states require paid time off for school closures; work share programs (several states allow employer to reduce temporarily employee hours with employees receiving some portion of UI benefits).

**Respect privacy of an employee tested for or who contracts COVID-19:** If an employer requires a health screening for an employee returning from travel to restricted areas, employer has a duty under the ADA to keep such information confidential. Although the employer or coworkers may be curious about medical information or diagnosis of an employee who contracts COVID-19 and have an urge to share such information with the workforce, DO NOT ASK, DO NOT SHARE. Ask employees to report flu-like symptoms or COVID-19-type symptoms but beware of disclosing protected health information or violating employees' rights under disabilities laws. It is likely CDC or the local Department of Health will contact the employer with directives, as healthcare providers are legally required to report COVID-19 diagnoses to health authorities.