

Preventing the Spread of Coronavirus at Work - The Science and the Law of It

Questions and Answers

1. **Have you heard if its possible for someone to be asymptomatic and still test positive for the virus even if beyond the incubation period?**

Answer: Yes, a person may be asymptomatic with a positive test and it may be beyond the incubation period. Symptoms may be mild or vague to certain individuals which may give the appearance of no symptoms as well.

2. **Who is the authority that we should use to confirm it is classified as a pandemic - CDC, WHO, either / or both?**

Answer: The CDC headquartered in Atlanta, Georgia is the nation's health protection agency, working 24/7 to protect **America** from health and safety threats, both foreign and domestic. CDC increases the health security of **our nation**. World Health Organization (WHO's) primary role is to **direct international health** within the United Nations. They are based in Geneva, Switzerland and have close partnerships with UN agencies, donors, foundations, academia, nongovernmental organizations and the private sector. So, during a pandemic, both organizations would be involved. WHO would be the leader in a pandemic situation internationally.

The CDC and WHO have Collaborating Centers to maintain national and international initiatives and activities.

3. **If employer decides to send them home and they are an hourly employee, EE may state that since it is our decision then they need to get paid. We have had those instances. We will require them to use their Vacation or Sick time. Please confirm that this can still be the case.**

Answer: Yes., per the CDC's 2020 Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease, you can send home any employee who is sick with acute respiratory symptoms. (https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fguidance-business-response.html.) In addition, the Fair Labor Standards Act says employers only have to pay nonexempt employees for work actually done. (29 U.S.C. §206; <https://www.employer.gov/EmploymentIssues/pay-and-benefits/Paying-for-all-hours-worked/>.) So, an employer would not have to pay an hourly employee for the hours she does not work. An employer should discuss with the employee her entitlement to use applicable leaves.

4. **I am in health care . . . if an individual contracts the virus, can employee refuse to work?**

Answer: According to the Occupational Health and Safety Act (OSHA) (29 C.F.R. 1977.12(b)(2); <https://www.osha.gov/right-to-refuse.html>), an employee has a right under that law to refuse to work if he meets all four of the following criteria:

1. Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so; and

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2. You refused to work in "good faith." This means that you must genuinely believe that an imminent danger exists; and
3. A reasonable person would agree that there is a real danger of death or serious injury; and
4. There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

If your healthcare worker refuses to come to work because a patient has Coronavirus, the issue is whether the worker's objection is reasonable. In keeping with the answer to the Question 3, you should first ensure that you have implemented whatever protocols you have to "eliminate the danger" and protect your healthcare workers from contracting **any** communicable illnesses from your patients. Those protocols may include protective practices, clothing, equipment, and gear. This link to OSHA standards and documents related to healthcare may be helpful in that regard:

<https://www.osha.gov/SLTC/healthcarefacilities/standards.html>. Other factors, such as the worker's duties and the frequency and proximity of the worker's contact with the patient, will also factor into the reasonableness of your employee's objections. If an employer takes appropriate steps to eliminate the danger and your employee refuses to come to work, you may discipline the employee for insubordination if you believe his continued objection to be unreasonable.

5. Why are they discouraging the use of mask? If the spread is within 6 feet.

Answer: The main discouragement on the use of the mask if you are healthy is because of natural environmental flora that help boost our immune systems. People who are sick with the coronavirus should be at home or in a healthcare facility. The masks available to the public may not be as effective and can give the public a false sense of protection.

6. How long does this virus live in droplet form to be at risk to workers, etc?

Answer: The duration of SARS-CoV-2 RNA detection in upper and lower respiratory tract specimens and in extrapulmonary specimens is not yet known but may be several weeks or longer, which has been observed in cases of MERS-CoV or SARS-CoV infection. While viable, infectious SARS-CoV has been isolated from respiratory, blood, urine, and stool specimens, in contrast – viable, infectious MERS-CoV has only been isolated from respiratory tract specimens. It is not yet known whether other non-respiratory body fluids from an infected person including vomit, urine, breast milk, or semen can contain viable, infectious SARS-CoV-2.

7. How fast do symptoms start? like if someone goes on a trip how soon after do symptoms start?

Answer: The CDC believes at this time that symptoms of COVID-19 may appear in as few as 2 days or as long as 14 days after exposure. This is based on what has been seen previously as the incubation period of MERS-CoV viruses. Every person can have a different response on the symptom start timeframe.

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8. How do we get the recording of this session?

Answer: The session is available on YouTube. See the attached link <https://youtu.be/UDoznLJ3ec> and was also sent via email for all participants that were registered.

9. Is it in our legal right to screen employees for a fever? If we use a healthcare professional at our site to do so?

Answer- The short answer is an employer can only screen employees' temperatures (without violating the ADA) if the Coronavirus becomes a widespread pandemic and government guidances indicate that taking employees' temperature is a reliable means of screening for that illness. The act of taking employees' temperatures is a "disability-related medical examination" under the ADA, which prohibits such inquiries unless they are "job-related and consistent with business necessity." (<https://www.eeoc.gov/policy/docs/guidance-inquiries.html>.) The EEOC's 2009 guidance (issued to address the H1N1 pandemic) opined that an employer would be allowed to take employees' temperatures during an influenza pandemic if the symptoms "become more severe than the seasonal flu or the H1N1 virus in the spring/summer of 2009, or if pandemic influenza becomes widespread in the community as assessed by state or local health authorities or the CDC." The EEOC went on to caution, however, that "some people with influenza, including the 2009 H1N1 virus, do not have a fever." (https://www.eeoc.gov/facts/pandemic_flu.html.) [As noted during the webinar, as of February 27, 2020, neither the CDC nor WHO has declared the Coronavirus a "pandemic".]

10. Do you suggest wearing a mask if you have to go on a plane?

Answer: If you suspect that others will be sick on the plane, wear a mask. It must fit securely on your face and will help remind you not to touch your eyes, nose and face with your hands.

The CDC does not recommend canceling or postponing travel to destinations with level 1 travel notices because the risk of COVID-19 is thought to be low. If you travel, the CDC has specific routine precautions for us to follow. These include handwashing and procedures on coughing and sneezing. See the CDC website for more information.

11. Can the virus spread from packages being sent from China?

Answer: There is "very low risk" of this happening according to the CDC agency and has no confirmed reports of this at all.

12. Can people who recover from COVID-19 be infected again?

Answer: The immune response to COVID-19 is not yet understood. Patients with MERS-CoV infection are unlikely to be re-infected shortly after they recover, but it is not yet known whether similar immune protection will be observed for patients with COVID-19.

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13. Can your dog or cat get the Coronavirus?

Answer: The World Health Organization says there is “no evidence” that your dog or cat can be infected with the new coronavirus. It was seen on the news today (2/28/20) that a dog was confirmed to have tested positive for the coronavirus in China. It is being investigated at this time.

References:

Prepared on 2/28/2020. Responses to the questions above are answered to the best of our ability with the information available at this time on the Coronavirus.

References include: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html>

Disclaimer:

We have presented this Q &A solely for general informational purposes and caution you that it may not apply to your specific situation. Reliance on any information provided is solely at your own risk. Contact your physician or attorney if you need a medical or legal evaluation tailored to your particular set of facts.