



COVID-19, REOPENING STATE AGENCIES

Frequently Asked Questions

Please Note: The federal Families First Coronavirus Response Act (FFCRA) and corresponding Division of Personnel (DOP) policy are set to expire December 31, 2020. Any reference to the Act or policy in the material below will not be applicable to events occurring on or after January 1, 2021. However, employees may still be entitled to leave under the federal Family and Medical Leave Act, West Virginia Parental Leave Act, and/or the DOP *Administrative Rule* (143CSR1).

INTRODUCTION

The purpose of this document is to provide technical assistance to West Virginia State agencies and employees regarding COVID-19 human resources (HR) management policies and practices that impact agencies, workers, and their families related to the reopening of State agencies and the return-to work of employees. Agencies are encouraged to follow the guidelines issued by [State](#), [Federal](#) and [local health officials](#) to help prevent workplace exposures to COVID-19. This and additional resources may be found at [Division of Personnel Families First Coronavirus Response Act Guidance and Resources](#).

1. How much information may an agency request when screening employees entering the workplace or from an employee who calls in sick, during the COVID-19 pandemic?

During a pandemic, an agency may ask such employees if they have COVID-19, or are experiencing symptoms associated with COVID-19, or ask if they have been tested for COVID-19. For COVID-19, symptoms include but are not limited to: fever, chills, cough, shortness of breath, or sore throat. As public health authorities and doctors learn more about COVID-19, they may expand the list of associated symptoms. Agencies should rely on the CDC, other public health authorities, and reputable medical sources for guidance on emerging symptoms when choosing questions to ask employees to determine whether they would pose a direct threat to health in the workplace. Agencies should make sure not to engage in unlawful disparate treatment based on protected characteristics in decisions related to screening and exclusion and must maintain all information about employee illness as a confidential medical record in compliance with the Americans with Disabilities Act (ADA) and W. Va. Code R. § 143-1-20.

2. During a pandemic, may an agency ask an employee why he or she has been absent from work if the agency suspects it is for a medical reason?

Yes. Asking why an employee did not report to work is not a disability-related inquiry. An agency is always entitled to know why an employee has not reported for work.

Example: During an influenza pandemic, an agency directs a supervisor to contact an employee who has not reported to work for five business days without explanation. The supervisor asks this employee why he is absent and when he will return to work. The supervisor's inquiry is not a disability-related inquiry under the ADA.

3. An employee left the workplace sick exhibiting COVID-19 symptoms. What should I do?

Supervisors should notify their agency HR immediately for additional guidance. Clean and disinfect the employee's work area, along with workplace common areas and frequently touched surfaces. Be sure to use an EPA-registered disinfectant that is EPA-approved for use against the virus that causes COVID-19 and is appropriate for the surface, following label instructions. Labels contain instructions for safe and effective use of the cleaning product including precautions you should take when applying the product, such as wearing gloves and making sure you have good ventilation during use of the product. Additionally, diluted household bleach solutions (at least 1000 ppm sodium hypochlorite) can be used if appropriate for the surface. Follow manufacturer's instructions for application, ensuring a contact time of at least 1 minute, and allow proper ventilation during and after application. Staff should continue the use of safe practices, i.e., wearing a mask, social distancing, good hygiene, etc.

4. May an agency require employees who reported having a positive COVID-19 test result, exposure to COVID-19 or been absent from the workplace during a pandemic to provide a doctor's note certifying fitness to return to work?

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation to returning employees. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an employee does not have the pandemic virus.

5. When may an agency take the body temperature of an employee?

Generally, measuring an employee's body temperature is considered a medical examination, and is prohibited under the ADA. However, upon declaration by the World Health Organization (WHO), of an international pandemic, and under the guidance of the CDC and state/local health authorities, agencies may measure employees' body temperature. Agencies should be aware that some people infected with the COVID-19 virus may not have a fever. Employees are not permitted to stay in the workplace with a temperature of 100.0 or higher.

6. If an agency requires all employees to have a daily temperature check before entering the workplace, may the agency maintain a log of the results?

Yes. In accordance with W. Va. Code R. § 143-1-20, the agency is required to maintain the confidentiality of medical information in addition to the ADA requirement that medical information be stored separately from regular personnel files. Paper notepads, electronic records, laptops, or any other electronic device should not be left where others may view them. An agency may even wish to use initials or another code to further ensure confidentiality of the name of an employee.

7. May an agency require employees to wear a cloth face covering while at work?

Yes. For the safety of employees, customers and visitors, agencies may require employees to wear masks, gloves or other personal protective equipment (PPE) to reduce the potential for exposure to COVID-19. Employees may be responsible for providing their own masks. Employees are encouraged to discuss any concerns they have about wearing a mask with their immediate supervisor. Employees are encouraged to follow guidance for the [use of cloth face coverings to help slow the spread of COVID-19](#).

8. Should employees working in their private offices wear cloth face covering?

Employees working alone in a private office do not need to wear a cloth face covering. However, when an employee exits the office, or receives a visitor, they may be required to wear a cloth face covering.

9. Are there restrictions on the type of face covering permitted in the workplace?

In addition to guidance issued by health and safety officials on the use of face coverings to slow the spread of COVID-19, face coverings must meet the standards of dress necessary to maintain a professional and safe working environment and to reflect an agency's public image. Messages or images that depict(s) or allude(s) to an obscenity, violence, or sex; use of controlled substances; or conveys political or religious opinions or unsuitable slogans are not permitted in the workplace. Employees are to comply with dress code policies established by her or his respective agency. Additional information regarding acceptable standards of dress are available in the DOP Policy, [Agency Dress Code](#).

10. Can an employee continue teleworking because of concerns regarding their own serious health condition?

Absent an undue hardship, agencies are encouraged to permit an employee to continue to telework if the employee requests to do so due to medical concerns. Should the employee be unable to telework, or telework becomes unavailable, working from an alternate worksite should be considered or it may be necessary for the employee to request the appropriate form of leave.

11. Can the agency change my work schedule when we return from teleworking?

Yes, according to section 14.2 of the Division of Personnel's *Administrative Rule* (W. Va. Code R. § 143-1-1 *et seq.*), agencies establish the work schedule for their employees and may include any work shifts they determine to be appropriate for the efficient operation of their agency.

12. What responsibility does an agency have to provide a reasonable accommodation to an employee who may be at higher risk for developing complications associated with the coronavirus under ADA?

According to the CDC, some employees may be at higher risk for developing complications associated with COVID-19. This means that when an agency receives a request for accommodation to reduce the risk of exposure to the coronavirus, an agency must consider this request under the ADA and engage in the interactive process to provide reasonable accommodations, barring undue hardship. To be eligible to receive workplace reasonable accommodations under the ADA, an employee must have an "actual", or a "record of", a disability, as defined by the ADA Amendments Act. Also, there must be some connection between the impairment and specific need for accommodation. For example, the employee might have an underlying impairment and limitation that, if infected with coronavirus, would lead to serious complications.

There is no comprehensive list of such impairments, but employees with heart disease, diabetes, lung disease or asthma, a weakened immune system, kidney disease, cirrhosis, etc. are considered at higher risk for developing serious complications, according to the CDC.

People 65 years and older and women who are pregnant are also at higher risk for developing complications from coronavirus but will not qualify to receive accommodations under the ADA solely on the basis of age or pregnancy. Agencies receiving accommodation requests from employees in these higher risk groups will need to consider their responsibilities under W. Va. Code [§5-11b-2 Pregnant Workers Fairness Act](#) and the federal [Pregnancy Discrimination Act](#) (PDA), which prohibits employers from treating pregnant workers different than other temporarily disabled workers.

Caregivers of individuals with risk factors are not entitled to receive workplace reasonable accommodations under the ADA but may be entitled to leave under the Family and Medical Leave Act (FMLA) or the recently passed Families First Coronavirus Response Act. For example, if a caregiver's child, spouse, or parent has coronavirus, they may be eligible for Emergency FMLA. Additionally, if an employee is caring for an immediate family member whose condition rises to the level of a serious medical condition as defined by the FMLA, the employee may be eligible for the previously established FMLA. For more information, visit the Department of Labor, Wage and Hour Division guidance on COVID-19.

13. An employee required to wear PPE requests modified protective equipment or other accommodation. Must an employer grant these requests?

An employer may require employees to wear PPE and observe [infection control practices](#) (for example, regular hand washing and social distancing protocols). However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for employees who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the agency should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.

14. May a requested accommodation be temporarily denied because it poses an undue hardship due to circumstances resulting from the pandemic?

Yes. An agency is not required to provide a reasonable accommodation if it poses an "undue hardship," which means "significant difficulty or expense." In some instances, an accommodation that would not have posed an undue hardship prior to the pandemic may pose one now.

15. What does an employee need to do in order to a [request reasonable accommodation](#) from the agency because he or she has one of the [medical conditions](#) that CDC says may place him or her at higher risk for severe illness from COVID-19?

An employee – or a third party, such as an employee's doctor – must notify that he or she needs an accommodation related to a medical condition (here, the underlying condition). Employees may request accommodations in conversation or in writing. While the employee (or third party) does not need to use the term "reasonable accommodation" or reference the ADA, he or she may do so. After receiving a request, the agency may [ask questions or seek medical documentation](#) to help determine the appropriate reasonable accommodation, barring [undue hardship](#), that can be provided.

16. May an employee take leave to participate in COVID-19 related aid?

In accordance with W. Va. Code §15-5-15.a, a certified disaster relief volunteer of the American Red Cross may be granted a leave of absence with pay, subject to approval of his or her immediate supervisor.

17. Are agencies permitted to hold in-person meetings and trainings?

Employers should follow social distancing and other guidelines issued by State and local authorities and health officials. Guidance regarding group settings will be updated as conditions change. Employers are encouraged to hold meetings and training virtually or telephonically to reduce the spread of COVID-19.

18. Can an agency require employees who have traveled to destinations where there is a COVID-19 outbreak to remain away from the workplace until it is clear they do not have COVID-19 symptoms?

Yes. When CDC or state or local public health officials recommend people remain away from the workplace for a specified period of time after visiting specific locations, employers can require employees who have traveled to those locations to remain away from workplace for the recommended period of time. CDC does not issue travel restrictions for localities within the United States. Agencies are encouraged to follow recommendations from public health officials and adhere to [guidance for individuals returning from international travel](#). Agencies are encouraged to permit employees to telework if such work is available. Should the employee be unable to telework, or telework becomes unavailable, it may be necessary for the employee to request the appropriate form of leave.

19. What action can be taken if an employee refuses to return to work?

If an employee refuses to return to work, as directed by his or her supervisor, appropriate disciplinary action may be taken. Agencies should consult their HR representatives and/or legal counsel before taking such action. Agencies may also contact DOP Employee Relations section at 304-414-1853 for guidance.

Additional guidance and updates regarding COVID-19, the reopening of the State and State agencies returning to work may be found by visiting:

[The Office of the Governor, West Virginia's Response to COVID-19, Actions and Executive Orders](#)
The Division of Personnel, [Families First Coronavirus Response Act Guidance and Resources](#)
The WV Department of Health and Human Resources, [Coronavirus Disease 2019](#)
The Centers for Disease Control, [Helping to Get and Keep America Open](#)