

The Workplace and COVID-19 Frequently Asked Questions

INTRODUCTION

Throughout the COVID-19 pandemic, it has been critical for agencies and employees to monitor evolving medical and public health guidance. Changes in such guidance influence not only healthy business operations but also employment standards under the Americans with Disabilities Act (ADA) and Equal Employment Opportunity Commission (EEOC). 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. Agencies are encouraged to monitor [COVID-19 Community Transmission Levels](#) and guidance issued by [State](#), [federal](#) and [local health officials](#).

1. 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.

2. 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 ALL employees entering the workplace if they are experiencing symptoms associated with COVID-19, if they have been tested for or currently have COVID-19. Symptoms associated with COVID-19 include but are not limited to fever, chills, cough, and shortness of breath. A [current list of symptoms](#) and Coronavirus Self-Checker tool are available on the CDC website at [Symptoms of COVID-19](#).

If an agency chooses to ask only a particular employee to answer screening questions or undergo other screening measures, the ADA requires the employer to have a reasonable belief based on objective evidence that this person may have the disease, such as the presence of COVID-19 symptoms. Agencies should make sure not to engage in unlawful disparate treatment based on protected characteristics in decisions related to screening and exclusion. The ADA

does not interfere with employers following recommendations by the CDC or other public health authorities regarding whether, when, and for whom testing or other screening is appropriate. 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.

3. 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 implement mandatory screening measures, including measuring 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.

4. May an agency, as a mandatory screening measure, administer a COVID-19 test to employees who are reporting to the workplace?

A COVID-19 viral test used to detect the presence of the COVID-19 virus is considered a medical examination under the ADA. Therefore, the ADA requires that any mandatory medical test of employees be “job-related and consistent with business necessity.” To determine whether such testing is consistent with the “business necessity” requirements of the ADA, agencies will need to assess current pandemic and individual workplace circumstances. Possible considerations in making the “business necessity” assessment may include the type and frequency of contact with others in the workplace or elsewhere that they are required to work (e.g., face-to-face customer service, exposure to vulnerable populations), the level of community transmission, and the accuracy and speed of processing for different types of COVID-19 viral tests. Agencies should check the latest [CDC guidance](#) as well as guidelines issued by [State, federal,](#) and [local health officials when](#) determining whether viral testing is appropriate.

5. May an agency require a COVID-19 antibody test before permitting employees who reported having a positive COVID-19 test result, exposure to COVID-19, or been absent from the workplace during a pandemic to re-enter the workplace?

No. An antibody test is different from a viral test to determine if someone has evidence of infection. As of July 2022, CDC guidance explains that antibody testing may not show whether an employee has a current infection, nor establish that an employee is immune to infection; as a result, it should not be used to determine whether an employee may enter the workplace. Based on this CDC guidance, at this time, antibody testing does not meet the ADA’s “business necessity” standard for medical examinations or inquiries for employees. Therefore, requiring antibody testing before allowing employees to re-enter the workplace is not allowed under the ADA.

- 6. 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 it is safe for the employee to return to work and that the employee is able to perform the job duties ?**

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. Employers may also follow CDC guidance to determine whether it is safe to allow an employee to return to the workplace without confirmation from a medical professional.

- 7. If an agency requires mandatory screening measures, such as temperature checks or viral testing, may the agency maintain a log of the results?**

Yes. All information about employee screening, testing or illness is considered a confidential medical record and must be maintained in compliance with W. Va. Code R. § 143-1-20 and ADA confidentiality requirements.

If an agency chooses to retain this data, steps are necessary to minimize compliance risk. The agency is required to maintain the medical information by storing it separately from regular personnel files. Paper notepads, electronic records, laptops, or any other electronic device must be secured. To further ensure confidentiality, an agency may even choose to use initials or another code to identify the employee.

- 8. Does ADA confidentiality requirements prevent an employee from disclosing to a supervisor when a coworker is exhibiting symptoms associated with COVID-19?**

No. It is not an ADA confidentiality violation for this employee to inform the supervisor about a coworker's symptoms. After learning about this situation, the supervisor should contact appropriate management officials to report this information and discuss any steps necessary to help prevent workplace exposures.

- 9. 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 the 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.

10. How long does someone need to quarantine or isolate if they have or were exposed to COVID-19?

Individuals should contact their medical provider, local health department or refer to CDC guidelines to determine when quarantine and isolation are appropriate. Updated guidelines and a Quarantine and Isolation Calculator are available at [COVID-19 Quarantine and Isolation | CDC](#).

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

12. 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 convey 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 is available in the DOP Policy, [Agency Dress Codes](#).

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

Absent 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. What does an employee need to do in order to [request a reasonable accommodation](#) from the agency because he or she has one of the [medical conditions](#) that the 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.

19. 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 the approval of his or her immediate supervisor.

20. Are agencies permitted to hold in-person meetings and training?

Employers should follow social distancing and other guidelines issued by State and local authorities and health officials. Guidance regarding group settings are updated as conditions change.

21. 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, 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 the 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.

22. 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 the DOP Employee Relations section at 304-414-1853 for guidance.

Additional guidance and updates regarding COVID-19, may be found by visiting:

[The Office of the Governor, West Virginia's Response to COVID-19, Actions and Executive Orders](#)

The WV Department of Health and Human Resources, [Coronavirus Disease 2019](#)

Centers for Disease Control and Prevention, [CDC COVID-19, When to Stay Home, Quarantine and Isolation, COVID Data Tracker, COVID in Your Community](#)

U.S. Equal Employment Opportunities Commission, [U.S. EEOC- What you should know about COVID-19 and the ADA and other EEO Laws](#)