

## Staffmark Group Client Guidance for Coronavirus Screening

*As a reminder discussion or questions with employees should be applied in a non-discriminatory manner. Any form of harassment or discrimination (unwelcome or offensive conduct whether verbal, physical or visual) will not be tolerated.*

COVID-19 is more commonly referred to as coronavirus.

Staffmark Group Screening Questionnaire – You can find the Staffmark Group Screening Questionnaire on myConnect by click on the Coronavirus (COVID-19) Information Center Learn More link. Or you can click on the hyperlink below.

[COVID-19 Voluntary Questionnaire \(CV 012\)](#)

### FAQs

**Q: May I ask questions to screen for potential exposure to the coronavirus?**

A: Yes, using the CoVID-19 Voluntary Questionnaire (CV 012).

**Q: What if an employee answers yes to any of the screening questions?**

A: Encourage the employee to seek medical attention and screening for the coronavirus.

**Q: What if an employee appears sick?**

If any employee presents themselves at work with a fever or difficulty in breathing, this indicates that they should seek medical evaluation. While these symptoms are not always associated with influenza and the likelihood of an employee having the COVID-19 coronavirus is extremely low, it is important to be cautious but not overreact. The virus symptoms are mild to severe respiratory illness for fever, cough and difficulty breathing. The Centers for Disease Control (CDC) believes at this time that symptoms may appear in as few as 2 days or 14 days after exposure.

**Q: How is the current COVID-19 coronavirus transmitted?**

People can catch COVID-19 from others who have the virus. The disease can spread from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. These droplets also land on objects and surfaces around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose, or mouth. Therefore, it is important to stay more than 1 meter (3 feet) away from a person who is sick. The CDC recommends as much as 6 feet. It is always good practice to wash your hands prior to touching your face.

**Q: Can we ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 coronavirus or the flu?**

Yes, you are permitted to ask them to seek medical attention and get tested for COVID-19, and under most circumstances you can ask them to leave work.

**Q: Can I require my employee(s) to stay away from work for 14 days or work from home for 14 days if potentially exposed?**

A: Yes. It would also be allowable to encourage the employee to seek prompt medical attention.

**Q: What is considered proximity/contact?**

A: Close proximity or contact can be, but is not limited to, being in the presence of family members, friends, significant others. Therefore, it is important to stay more than 1 meter (3 feet) away from a person who is sick. The CDC recommends as much as 6 feet.

**Q: Does the Family and Medical Leave Act (FMLA) apply to employees or their immediate family members who may contract coronavirus?**

A: It depends. Generally, employees are not entitled to take FMLA to stay at home to avoid getting sick. Contact your Human Resources representative for additional guidance.

**Q: Can I take their temperature? Can I ask if anyone voluntarily wants their temperature taken?**

A: Yes, with specific protocols. The EEOC pandemic guidance provides justification for requiring “medical examinations” to ensure an employee does not present a direct threat in the workplace. Because a temperature check is considered a medical examination by the ADA and EEOC it should be performed by a medical professional with an appropriate thermometer or by the individual either with our client or a Staffmark Group representative. It is important to note that some employees with COVID-19 (coronavirus) may not present with fever as a symptom so utilizing the additional screening questions is still our first recommendation.

Other items to keep in mind:

- A person may not have a fever and yet be a carrier of the virus.
- Time waiting in line to be temperature tested could be compensable per some state laws. California is an example.
- Taking workers' temperatures may cause unnecessary fear and may generally not be well received.

Therefore, it important to contact your Human Resources representative for guidance.

Additional Guidance: The Americans with Disabilities Act (ADA) places restrictions on the inquiries that an employer can make into an employee's medical status. The ADA prohibits employers from making disability-related inquiries and requiring medical examinations, unless (1) the employer can show that the inquiry or exam is job-related and consistent with business necessity, or (2) where the employer has a reasonable belief that the employee poses a direct threat to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation.

Whether an outbreak rises to the level of a "direct threat" depends on the severity of the illness. The EEOC instructs employers that the assessment by the CDC or public health authorities provides the objective evidence needed for a disability-related inquiry or medical examination. To date, the CDC has not classified the COVID-19 coronavirus as a pandemic.

## **Q: What if I want to only screen employees of Asian descent?**

A: Do not show prejudice to people of Asian descent, because of fear of this new virus. Do not assume that someone of Asian descent is more likely to have COVID-19. People of Asian descent, including Chinese Americans, are not more likely to get COVID-19 than any other American.

Believing someone of Asian descent is more likely to have the coronavirus could be perceived as disparate treatment and national origin discrimination.

Avoiding employees of Asian descent due to fear of contracting the coronavirus is an example of subjecting someone to disparate treatment or harassment in the workplace based on national origin.

## **Q: Can an employee refuse to wear a mask?**

Yes, under most circumstances. Under the OSHA respiratory protection standard, 29 C.F.R. 1910.134, which covers the use of most safety masks in the workplace, a respirator must be provided to employees only "when such equipment is necessary to protect the health of such employees."

Doctors agree that the best defense against the COVID-19 coronavirus and influenza is simply washing your hands. Thus, the consensus is that there are more appropriate measures of defense than wearing a surgical mask or respirator.

## **Q: Can an employee refuse to come to work because of fear of infection?**

Employees are only entitled to refuse to work if they believe they are in imminent danger. Section 13(a) of the Occupational Safety and Health Act (OSH Act) defines "imminent danger" to include "any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act." OSHA discusses imminent danger as where there is "threat of death or serious physical harm," or "a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency."

The threat must be immediate or imminent, which means that an employee must believe that death or serious physical harm could occur within a short time, for example, before OSHA could investigate the problem. Requiring travel to China or to work with patients in a medical setting without personal

protective equipment at this time may rise to this threshold. Most work conditions in the United States, however, do not meet the elements required for an employee to refuse to work. Once again, this guidance is general, and employers must determine when this unusual state exists in your workplace before determining whether it is permissible for employees to refuse to work.

**Q: Should I implement a hiring freeze due to the coronavirus?**

A: There are a several options that can be explored such as video interviewing, work from home options if applicable and so on.

**Q: What if employees are talking about the coronavirus during work?**

A: The National Labor Relations Act (NLRA) protects employees right to engage in discussion about their employment terms and working conditions. These conversations should not interfere with work duties and should be conducted outside of working hours or during meal and rest breaks.

**Q: Can an employee be sent home from the job if they appear to have acute respiratory illness symptoms?**

A: As a general rule, yes. The CDC recommends that employees who appear to have acute respiratory illness symptoms, such as coughing and shortness of breath, upon arrival to work or become sick during the day should be sent home immediately. As a best practice, actively encourage sick employees to stay home.

**Q: For states/regions/cities with paid sick leave ordinances, can employees use accrued and available leave for absences due to coronavirus or other upper respiratory illnesses or flu-like symptoms?**

A: Yes. Accrued and available leave should be used for these types of absences.

**Q: Can employees be disciplined for absences related to diagnosed coronavirus or absences due to symptoms of acute respiratory illness? Can employees be disciplined for absences related to the caring for a family member with diagnosed coronavirus or acute respiratory illness?**

A: No, disciplinary action would not be recommended. Currently, the CDC recommends employers actively encourage employees to stay home if they have symptoms of acute respiratory illness. Employees may also need to stay at home to care for sick children or other sick family members

**Q: Can I ask for a doctor's note either to validate that an employee is sick with acute respiratory illness or to return to work?**

A: While we would ordinarily ask for a note from a health care provider for absences over three days, the CDC would not require a health care provider's note, even for employees who are sick with acute respiratory illness to validate their illness or to return to work. Health care provider offices and medical facilities may be extremely busy under the current circumstances, and not able to provide such documentation in a timely way per the CDC.

Sometimes it is difficult for employees to have access to medical providers or to afford a doctor's visit. Some urgent care facilities provide screening at a reduced cost.

If the CDC or a state or local health authority proclaims a pandemic has spread in an area, the guidance issued by the EEOC confirms that an ADA-covered employer can require employees who have been away from the workplace during a pandemic to provide a health care provider's note certifying fitness to return to work.

**Q: What are some best practices we can immediately implement?**

A: First and foremost, encourage employees to stay home if they are sick.

Encourage basic protective measures like frequent hand washing for 20 seconds or more and avoid touching eyes, nose and mouth.

Practice good respiratory hygiene/etiquette like covering your mouth and nose with your bent elbow or tissue when you cough or sneeze. Then dispose of the used tissue immediately.

Employees should seek medical care early if experiencing fever, cough and difficulty breathing.

Perform routine environmental cleaning, such as frequent cleaning of desktops and work surfaces, keyboards and door handles.

Provide tissue, hand sanitizer, and ensure restrooms and wash stations are well stocked with soap.

Stay calm and informed on the latest developments about COVID-19. Follow advice given by health care providers, national and local public health authorities on how to protect yourself and others from COVID-19.

The following resources provide up to date news and guidance on COVID-19

**Additional Links:**

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public> - This link has a variety of posters that can be printed and displayed in workplaces.

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/COVID19-symptoms.pdf>

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/stop-the-spread-of-germs.pdf>

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/stop-the-spread-of-germs-sp.pdf> (Poster in Spanish)

\*Excerpts taken from Fisher-Phillips guidance for employers.