

COVID-19: Frequently Asked Labor and Employment Questions

COVID-19: A GLOBAL PANDEMIC

What is “COVID-19”?

According to the U.S. Department of Health and Human Services’ Centers for Disease Control and Prevention (“CDC”), COVID-19 (also commonly known as “the coronavirus”) is a respiratory disease caused by a virus that spread from China to many other countries around the world, including the United States. The CDC’s website provides the latest information about COVID-19 and the global outbreak.

(Source: www.cdc.gov/coronavirus/2019-ncov).

What are the symptoms of COVID-19?

COVID-19 can cause illness ranging from mild to severe and, in some cases, can be fatal. Symptoms typically include fever, cough, and shortness of breath. Some people infected with the virus have reported experiencing other non-respiratory symptoms. Other people, referred to as asymptomatic cases, have experienced no symptoms at all. According to the CDC, symptoms of COVID-19 may appear in as few as 2 days or as long as 14 days after exposure.

(Source: <https://www.osha.gov/Publications/OSHA3990.pdf>).

How does COVID-19 spread?

The virus is thought to spread mainly from person to person, including:

- Between people who are in close contact with one another (within about 6 feet).
- Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

People are thought to be most contagious when they are most symptomatic (i.e., experiencing fever, cough, and/or shortness of breath). Some spread might be possible before people show symptoms; there have been reports of this type of asymptomatic transmission with this new coronavirus, but this is also not thought to be the main way the virus spreads.

It may be possible that a person can get COVID-19 by touching a surface or object contaminated with the virus and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the primary way the virus spreads.

Although the United States has implemented public health measures to limit the spread of the virus, it is likely that some person-to-person transmission will continue to occur.

(Source: <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> and <https://www.osha.gov/Publications/OSHA3990.pdf>).

WORKPLACE SAFETY MEASURES TO PREVENT THE SPREAD OF COVID-19

What does OSHA require if an employee is diagnosed with COVID-19?

OSHA's General Duty Clause mandates that employers maintain a workplace free of recognized hazards likely to cause death or serious physical harm. Clearly, if an employer becomes aware that an employee has been diagnosed with COVID-19, the Employer has an obligation to keep the infected employee out of the workplace. In addition to subjecting its other employees to COVID-19, the employer may receive a Citation from OSHA for permitting an employee with COVID-19 to come to work.

(Source: <https://www.genovaburns.com/publications/labor-law/2020-03-13-osh-issues-pertaining-to-covid-19>).

What are the OSHA requirements if an employee only shows symptoms of COVID-19, but has not yet been diagnosed?

Even if an employee is only suspected of having COVID-19, but has not yet been diagnosed, the employer may be in violation of the General Duty Clause if it permits an employee that shows symptoms of COVID-19 to come to work. The CDC has indicated that if an employee has acute respiratory illness and a fever over 100.4, they should stay home. If an Employer learns that an employee has these symptoms when the employee is already at work, OSHA's guidance indicates that employers should immediately keep this employee separate from other employees, provide the employee with a face mask, if feasible and available, and ask the employee to wear it, and then contact local health authorities or the CDC for further instruction. While this may seem extreme when the employee does not have a COVID-19 diagnosis, failure to comply with these steps could subject other employees to COVID-19 and could subject the employer to an OSHA Citation.

(Source: <https://www.genovaburns.com/publications/labor-law/2020-03-13-osh-issues-pertaining-to-covid-19>).

Can an Employer enforce the terms of a Company's Attendance Policy or discipline employees for refusing to come to work due to fear of COVID-19?

Depending upon the circumstances, enforcement of the Attendance Policy or discipline for the employee's refusal to work, might constitute unlawful retaliation under OSHA's anti-retaliation provisions. The circumstances where an employee is protected requires: (1) the employee brought the dangerous situation to the employer's attention and the employer failed to correct it, (2) the employee's refusal to work was based on a good faith belief that the situation was dangerous, (3) a reasonable person, under the circumstances, would conclude that there is danger of death or serious injury, and (4) there is insufficient time, due to the urgency of the situation, to eliminate the danger through the regular enforcement channels. Thus, employers that discipline employees for refusal to work due to fear of COVID-19 infection need to consider the risks of an OSHA Citation for retaliation if that employee had a reasonable belief that that by working they would subject themselves to a COVID-19 infection.

(Source: <https://www.genovaburns.com/publications/labor-law/2020-03-13-osh-issues-pertaining-to-covid-19>).

If an employee has recently traveled abroad, should be excluded from work?

CDC has issued travel advisories for several countries. Please refer to the [CDC Coronavirus Disease 2019 Information for Travel](#) for the latest travel advisories.

Travelers returning from the countries known to be affect should follow recommendations provided by the CDC for [Travelers Returning from High Risk Countries](#).

(<https://www.nj.gov/labor/employer-services/business/covid.shtml>).

Has OSHA provided any guidance on Steps that Employers should take to reduce the risks of its employees being exposed to COVID-19?

On March 11, 2020, OSHA put out Guidance on Preparing Workplaces for COVID-19. (See <https://www.osha.gov/Publications/OSHA3990.pdf>). The guidance makes several recommendations as to steps that should be immediately taken by employers, including: (1) developing an Infectious Disease Preparedness and Response Plan, (2) prepare to implement basic infection prevention measures, (3) develop policies and procedures for prompt identification and isolation of sick people, if appropriate, and (4) develop, implement and communicate about workplace flexibilities and protections. While the Guidance does not have the impact of an OSHA regulation, employers that fail to comply with OSHA's guidance are at higher risk of receiving a Citation from OSHA for failing to maintain a safe and healthy workplace.

(Source: <https://www.genovaburns.com/publications/labor-law/2020-03-13-osh-issues-pertaining-to-covid-19>).

EMPLOYEE RIGHTS RELATED TO COVID-19

How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?

During a pandemic, employers can ask employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record.

(Source: https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).

Can employers require employees to stay home if they have symptoms of the COVID-19?

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace.

(Source: https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).

May an employer encourage employees to telework (i.e., work from an alternative location such as home) as an infection-control strategy during a pandemic?

Yes. Telework is an effective infection-control strategy that is also familiar to employers as a reasonable accommodation. In addition, employees with disabilities that put them at high risk for complications of pandemic influenza may request telework as a reasonable accommodation to reduce their chances of infection during a pandemic.

(Source: https://www.eeoc.gov/facts/pandemic_flu.html#secB).

When employees return to work, does the American With Disabilities Act of 1990 (“ADA”) allow employers to require doctors’ notes certifying their fitness for duty?

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if COVID-19 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. 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 individual does not have COVID-19.

(Source: https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).

If an employer is hiring, may it screen applicants for symptoms of COVID-19?

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.

(Source: https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).

May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

(Source: https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).

May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?

Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

(Source:
https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).

May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?

Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

(Source:
https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).

PAID LEAVE AND BENEFITS FOR EMPLOYEES AFFECTED BY COVID-19

Is an employee who has COVID-19, or symptoms of COVID-19, entitled to paid leave or other benefits in New Jersey?

If an individual has tested positive for COVID-19, or has symptoms of COVID-19 and is unable to work, he/she:

- Can use accrued **Earned Sick Leave**: As of October 2018, employers of all sizes must provide full-time, part-time, and temporary employees with up to 40 hours of **earned sick leave** per year so they can care for themselves or a loved one.

If an employee uses up their Earned Sick Leave and still cannot return to work, they may apply for one of the following programs, depending on their situation and eligibility:

- Can apply for **Temporary Disability Insurance (TDI)**: A claim would need to be filed online at myleavebenefits.nj.gov; the health care provider would give the diagnosis and the duration the individual is expected to be out of work. Available wage records on file would determine the amount of TDI benefits. It is against the law for employers to retaliate against employees for taking or seeking to take TDI benefits. In addition, some NJ workers are eligible for job-protected medical leave under the **Federal Family and Medical Leave Act (FMLA)**.
- May be eligible for **Workers' Compensation**: If a person contracts the virus because he/she waited on or worked with someone who had the virus, or contracted the virus for any other work related reason, that person could be eligible for **workers' compensation**.

(Source: <https://www.nj.gov/labor/worker-protections/earnedsick/covid.shtml>).

Is an employee who was exposed to COVID-19 during the course of their work (e.g., retail) and has now been told to self-quarantine, entitled to paid leave or other benefits in New Jersey?

- May be able to use accrued **Earned Sick Leave**: The **Earned Sick Leave law** states, in part: "Time during which the employee is not able to work...because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others."

- May be eligible for **Workers' Compensation**: If a person is directed to self-quarantine by their employer or a public health official following known exposure to the virus during the course of their work, that person could be eligible for **workers' compensation**.

(Source: <https://www.nj.gov/labor/worker-protections/earned-sick/covid.shtml>).

Is an employee who is unable to work because their child's school or daycare was ordered closed by a public official for a public health reason entitled to paid leave or other benefits in New Jersey?

Can use accrued **Earned Sick Leave**: A school or childcare closure for cleaning or other coronavirus preparation would be considered an allowable use of Earned Sick Leave.

The **Earned Sick Leave law** states, in part: "Time during which the employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others."

(Source: <https://www.nj.gov/labor/worker-protections/earned-sick/covid.shtml>).

Is an employee who is out of work because their employer voluntarily closed (temporarily or otherwise) because of COVID-19 entitled to paid leave or other benefits in New Jersey?

Could be eligible for **Unemployment Insurance benefits (UI)**: A claim would need to be filed at myunemployment.nj.gov, preferably online, and benefits amount would be determined through available wage records. This claim would initially be considered a temporary layoff, thus suspending the provision that the worker be able, available and actively seeking work. As of now, a layoff lasting longer than eight weeks would require the person to be able, available and actively looking for employment.

(Source: <https://www.nj.gov/labor/worker-protections/earned-sick/covid.shtml>).

Is an employee who is unable to work because their place of business was ordered closed by a public official for a public health reason entitled to paid leave or other benefits in New Jersey?

- Can use accrued **Earned Sick Leave**: The **Earned Sick Leave law** states, in part: "Time during which the employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others."

- If an employee uses up their Earned Sick Leave and cannot return to work, they may apply for [Unemployment Insurance benefits \(UI\)](#): A claim would need to be filed at myunemployment.nj.gov, preferably online, and the benefit amount would be determined through available wage records. This claim would initially be considered a temporary layoff, thus suspending the provision that the worker be able, available and actively seeking work. As of now, a layoff lasting longer than eight weeks would require the person to be able, available and actively looking for employment. If, however, the individual subsequently contracts the virus, then the claim would be switched over to [Disability During Unemployment](#).

(Source: <https://www.nj.gov/labor/worker-protections/earnedicksick/covid.shtml>).

Is an employee whose place of business was ordered closed by a public official for a public health reason but it remains open in defiance of that directive, and who refuses to go to work as a result, entitled to paid leave or other benefits in New Jersey?

Can use accrued [Earned Sick Leave](#): The [Earned Sick Leave law](#) states, in part: “Time during which the employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others.”

(Source: <https://www.nj.gov/labor/worker-protections/earnedicksick/covid.shtml>).

Is an employee who is losing hours because of reduction in force related to COVID-19 entitled to paid leave or other benefits in New Jersey?

Could be eligible for [partial Unemployment Insurance \(UI\) benefits](#): If a person is still employed, but the regular hours of work have been reduced, depending on the number of hours that have been reduced and the amount of earning for the week, the person would be eligible for reduced UI benefits. To be eligible for [partial unemployment benefits](#), the person cannot work more than 80% of the hours normally worked.

For example, if a person normally works 40 hours a week, they cannot work more than 32 hours in a week to be eligible. Additionally, if the person earns 20% or less of their weekly benefit rate, the person would receive the full weekly benefit. For earnings greater than the 20%, the weekly benefit would be reduced.

(Source: <https://www.nj.gov/labor/worker-protections/earnedicksick/covid.shtml>).

Is an employee who does not go to work because their healthcare provider says they are at greater risk due to a pre-existing health condition entitled to paid leave or other benefits in New Jersey?

- Can use accrued [Earned Sick Leave](#): The [Earned Sick Leave law](#) states, in part, the permitted use of self-care: “Time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury, or other adverse health condition, or for preventative medical care for the employee;” and, the permitted use to protect public

health: “because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee’s family in need of care by the employee, would jeopardize the health of others.”

- Could be eligible for [Temporary Disability Insurance \(TDI\)](#): A claim would need to be filed online at myleavebenefits.nj.gov; the health care provider would give the pre-existing diagnosis and the duration the individual is expected to be out of work. Available wage records on file would determine the amount of TDI benefits. It is against the law for employers to retaliate against employees for taking or seeking to take TDI benefits. In addition, some NJ workers are eligible for job-protected medical leave under the [Federal Family and Medical Leave Act \(FMLA\)](#).

(Source: <https://www.nj.gov/labor/worker-protections/earnedsick/covid.shtml>).

Is an employee who is told to self-quarantine due to virus exposure outside of the workplace entitled to paid leave or other benefits in New Jersey?

Can use accrued [Earned Sick Leave](#): The [Earned Sick Leave law](#) states, in part, the permitted use of self-care: “Time needed for diagnosis, care, or treatment of, or recovery from, an employee’s mental or physical illness, injury, or other adverse health condition, or for preventative medical care for the employee;” and, the permitted use to protect public health: “because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee’s family in need of care by the employee, would jeopardize the health of others.”

(Source: <https://www.nj.gov/labor/worker-protections/earnedsick/covid.shtml>).

Is an employee who has to care for a relative or loved one with the coronavirus or symptoms of COVID-19 entitled to paid leave or other benefits in New Jersey?

- Can use accrued [Earned Sick Leave](#): The [Earned Sick Leave law](#) states in part, “time needed for the employee to aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member’s mental or physical illness or other adverse health condition, or during preventive medical care for the family member.”
- If an employee uses up their Earned Sick Leave and still cannot return to work, they may apply for [Family Leave Insurance](#): If caring for a [family member](#) who has the coronavirus or symptoms of COVID-19, a claim would need to be filed at myleavebenefits.nj.gov and the family member’s health care provider would give the diagnosis and the expected length of time the caregiver will need to be out of work. Available wage records would determine the amount of benefits. It is against the law for employers to retaliate against employees for taking or seeking to take Family Leave benefits. In addition, many NJ workers are eligible for job-protected family leave under the [NJ Family Leave Act \(NJFLA\)](#).

(Source: <https://www.nj.gov/labor/worker-protections/earnedsick/covid.shtml>).

Given the complexity of the issues created by the COVID-19 outbreak and the fluidity of this global crisis, this list of frequently asked questions is not intended to be (and cannot be) exhaustive of all issues. Also, nothing stated herein is intended to constitute legal

advice and it does not serve as a substitute for competent legal counsel. Accordingly, please contact your attorney for legal advice related to specific issues created by COVID-19.