

STAYING IN COMPLIANCE WHEN FACED WITH COVID-19 ISSUES

1. According to EEOC guidance, the following is helpful:
 - a. 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?
 - ADA-covered employers may ask such employees if they are experiencing symptoms of the virus. Employers must maintain all information about an employee illness as a confidential medical record in compliance with the ADA.
 - b. Does the ADA allow employers to require employees to stay home if they have symptoms of COVID-19?
 - Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace.
 - c. When employees return to work, does the ADA allow employers to require doctors' notes certifying the employee's fitness for duty?
 - Yes. Such inquiries are permitted under the ADA, either because they would not be disability-related, or they would be justified under the ADA standards for disability-related inquiries.
2. What must I do under OSHA guidelines in response to COVID-19?
 - OSHA has deemed COVID-19 a recordable illness when a worker is infected on the job. Therefore, you will be required to prepare and file appropriate reports with OSHA in the event an employee becomes exposed to the virus at work or while travelling for work.
 - An employer's failure to adequately respond to the effects of a pandemic in the workplace provides a basis for the general-duty clause violation citation under OSHA.
 - An employee's refusal to come to work due to concerns over contracting COVID-19 may be considered protected activity, which would implicate OSHA's anti-retaliation guidelines. Accordingly, an employee may refuse to work upon a reasonable belief that they are in imminent danger, that there is a threat of serious physical harm at the workplace, and, therefore, the employee has no reasonable alternative but to avoid the workplace.