

CORONAVIRUS WORKPLACE ALERT: NEW GUIDANCE FROM THE EEOC AND OSHA

March 19, 2020

Both the EEOC and OSHA have just issued new guidance. While we don't want to swamp you with information, the guidance offers some very practical guidance for employers that you should be aware of.

Please keep in mind that this is a general guide, and you should seek legal advice when you encounter a tricky issue. Also, if you have employees employed under a collective bargaining agreement, always review the CBA. We answered some of these questions in our March 9th Alert. The following represents the latest guidance from the federal government.

- Asking employees about symptoms: If an employee calls in sick, you may ask them if they are experiencing symptoms of Coronavirus, which include fever, chills, cough, shortness of breath, and sore throat. Maintain all information as confidential medical records in compliance with the ADA.
- Body temperature: Because the CDC has declared Coronavirus to be a pandemic, EEOC states that employers may measure employees' body temperature. However, be aware that not all individuals with Coronavirus will have a fever.
- Returning to work: employers may require a doctor's note certifying the employee is fit to return to work. However, at this time, there are limited Coronavirus tests available and unfortunately, not everyone is eligible to be tested. From a practical matter, an employee may not be able to obtain a doctor's note certifying they are fit to return to work. The EEOC recommends employers ask local clinics to "provide a form, stamp, or an email to certify that an individual does not have the pandemic virus."
- Hiring: employers may screen applicants for symptoms of Coronavirus *after* making a conditional job offer, provided the employer does this for all entering employees. If the applicant has Coronavirus or symptoms associated with the virus, the employer may delay their start date. If the employer needs the employee to begin working immediately and it is unsafe for the applicant to do so, the employer may withdraw the job offer.

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- OSHA reporting: OSHA is requiring employers to record cases of COVID-19 when: 1) the case is confirmed by health care officials, 2) the case is work-related, and 3) results in death, days away from work, restricted work, or medical treatment. Illnesses are “work-related” when the illness results from events or exposures in the work environment. Because this can be a fact-specific analysis, if you have an employee diagnosed with Coronavirus, seek legal counsel to determine your OSHA reporting requirements.

Brann & Isaacson is sending employment law updates to help employers respond to the COVID-19 pandemic. If you found this update helpful, please email us at EmploymentUpdates@brannlaw.com to be added to our mailing list.