



# Dealership Health and Safety Concerns During a Pandemic

**Legal Disclaimer:** This document will change over time with new information and developments. It does not provide, and is not intended to constitute, legal advice. All content and materials are for general informational purposes only. **Important:** consult an attorney familiar with the federal, state and/or local law employment law, and with dealership operations, to obtain specific advice with respect to any specific legal matters. **Note:** since many state and local governments have instituted emergency COVID-19-related measures and may have stricter or different employment laws that apply to your operations, please pay close attention to the information you receive from your state and metro dealer associations and your outside counsel.

Dealerships are operating under a variety of federal, state, and local edicts restricting both business operations and public activities. Sales and service customers are being innovatively accommodated to help ensure that their transportation needs are being met. Importantly, these efforts require that special attention be paid to practices aimed at providing safe and healthy workplaces and transactions for employees and for customers.

## I. SPECIFIC RECOMMENDATIONS

- A. **Review [A Dealer Guide to Safely Operating Your Dealership During a Pandemic](#) and NADA's [Lifeline Webinar Series](#) for guidance on health and safety issues and suggestions during a pandemic.**
- B. **Keep abreast of the latest federal and state mandates and best practice suggestions.** Federal guidance changes as more is learned about the COVID-19 virus. Check NADA's [Coronavirus Hub](#) often to stay abreast of new developments. Also pay close attention to communications from your state and local ATAEs and your state and local health departments.
- C. **Educate and engage with employees.** Continually remind employees of [how to protect themselves and others](#), of the [Guidelines for Cleaning and Disinfecting](#) the workplace, of the [symptoms of COVID-19](#), and of the importance of seeking medical attention if symptoms appear. Consider making changes to cleaning protocols based on the [EPA's guidance for cleaning businesses](#) and communicate these changes with management and your employees. Check in with isolated or sick employees and their families to offer support. Good policies and goodwill go a long way during a pandemic.
- D. **Rely on experts.** For example, when dealing with sick or potentially exposed employees, follow the direction of their medical providers and local health officials. Refine business response plans as federal and state guidance changes, and work with your attorney to address employment law issues when they arise, such as with respect to workers compensation and [emergency paid sick leave](#).

### KEY RELATED NADA WEBINARS:

[Managing Service Operations: Making it through the COVID-19 Pandemic](#)

[So, an Employee Has Covid-19 Symptoms or Has Tested Positive...Now What?](#)

[Running a Dealership During a Pandemic: Legal Issues and Federal Mandates](#)

### KEY FEDERAL RESOURCES INCLUDE:

1. The Centers for Disease Control's (CDC) [online resources](#) for businesses to plan, prepare, and respond to COVID-19. The CDC also has guidance for [critical infrastructure workers](#) and, in the case of a suspected or confirmed infections, the CDC offers [helpful cleaning recommendations](#).
2. The Occupational Safety and Health Administration (OSHA) offers [Guidance on Preparing Workplaces for COVID-19](#) with steps to take to protect employees.
3. The U.S. Equal Employment Opportunity Commission (EEOC) provides [technical assistance question and answers](#) related to COVID-19 and workplace anti-discrimination laws.
4. The Environmental Protection Agency (EPA) has [guidance on disinfectants](#) for use against COVID-19 [and guidance for properly cleaning businesses](#).

## II. FREQUENTLY ASKED QUESTIONS: EMPLOYEE HEALTH AND SAFETY

**Q** There are both federal and state health and safety standards and laws. Which apply to my dealership during the COVID-19 pandemic?

**A** Both. There are no specific federal OSHA or state standards covering COVID-19, but OSHA offers [guidance](#) on key issues related to the COVID-19 pandemic. For dealerships, the primary regulatory obligation falls under the so-called “General Duty Clause,” which requires employers to furnish workers with employment and a place of employment free from recognized hazards that cause or are likely to cause death or serious physical harm.

Mitigate hazards to protect employees consistent with OSHA’s [Guidance on Preparing Workplaces for COVID-19](#), which outlines steps to take based on potential employee exposures. Dealership employees generally have a medium or low exposure risk. OSHA [states](#) that the most current [CDC guidance](#) should be consulted when assessing potential workplace hazards and evaluating the adequacy of protective measures. Where COVID-19 circumstances may interfere with a dealership’s efforts to comply with applicable health and safety standards, OSHA has stated that it will consider good faith efforts to comply before deciding to undertake any potential enforcement actions.

Protect employees from exposure to [hazardous chemicals used for cleaning and disinfection](#). Common sanitizers and sterilizers may contain hazardous chemicals. Follow [EPA and CDC guidance](#) on crafting and implementing a plan to keep your business clean and disinfected. Where employees may be exposed to hazardous chemicals, comply with [OSHA’s Hazard Communication Standard](#), with personal protective equipment standards, and with other applicable OSHA chemical standards.

Note if your state has an [OSHA-approved State Plan](#). State Plans have health and safety standards and enforcement programs that are at least as effective as OSHA’s but may also impose different or more stringent mandates. Many state and local governments have instituted emergency COVID-19-related measures and have imposed stricter or different employment laws applicable to dealership operations. States also differ on whether they treat dealership sales, parts, service and autobody operations “essential” for COVID-19 related purposes. Again, reach out to your state and metro dealership associations and attorneys for guidance on state occupational health and safety mandates and their COVID-19 implications.

**Q** Is a case of COVID-19 a recordable illness for purposes of OSHA injury and illness recordkeeping and reporting?

**A** It depends. OSHA has new [guidance](#) on this issue. [OSHA recordkeeping requirements](#) mandate that covered employers record certain work-related injuries and illnesses on their OSHA 300 log. Typically, COVID-19 is a recordable illness, and covered dealerships are responsible for recording cases of COVID-19, if the case:

1. Is a confirmed case of COVID-19, as defined by the CDC;
2. Is “work-related”; and
3. Involves one or more of OSHA’s general recording criteria.

While dealers are not expected to undertake extensive medical inquiries, businesses must still make good faith efforts to determine if the case of COVID-19 is indeed work-related. In determining whether a good-faith effort was made, the DOL will examine:

1. The reasonableness of the employer’s investigation into work-relatedness of the illness.
2. The evidence available to the employer.
3. The evidence that COVID-19 was transmitted at work.

If, after examining this information, the employer is unable to determine if the workplace played a causal role in the transmission of COVID-19, the employer does not have to record the illness. Although the transmission of the illness may not be deemed to be work-related, employers should still examine COVID-19 cases among their employees and respond appropriately to protect their employees.

If you have reason to believe an employee may have contracted COVID-19 at the dealership, work with an attorney to assess potential recordkeeping responsibilities.

**Q Should dealership employees wear face coverings or masks?**

**A** Some employees may wish to wear face coverings to allow them and/or their customers to feel safe. State and local health departments offer guidance on this issue and may impose requirements for certain workers or persons in public to wear face coverings. For example, [New York](#) requires that essential business employees wear face coverings, which employers must either provide or reimburse workers for buying. The CDC [recommends](#) that cloth face coverings be worn in public settings where social distancing measures are difficult to maintain, especially in areas of significant community-based transmission. Given the CDC's guidance, it is not recommended that dealerships refuse employee requests to wear face coverings or masks. As the CDC notes, cloth face coverings are not surgical masks or N-95 respirators, and thus are not subject to OSHA's respiratory protection mandate.

**Q Can I ask an employee exhibiting symptoms of COVID-19 to stay home?**

**A** Yes. The CDC [indicates](#) that employees exhibiting symptoms of influenza-like illness at work should leave the workplace. Further, the [Equal Employment Opportunity Commission](#) (EEOC) [indicates](#) that advising workers to go home is permissible and not considered disability-related if the symptoms presented are similar to COVID-19 or the flu.

**Q An employee has tested positive for COVID-19. What should the dealership do?**

**A** The NADA Lifeline Webinar, [So, an Employee Has Covid-19 Symptoms or Has Tested Positive...Now What?](#) covers this topic in significant detail. Typically, infected employees should be sent home until released by their medical provider or local health department. Follow CDC guidelines for [cleaning and disinfecting](#) areas where the sick employee was.

Ask the infected employee to identify all employees, customers and other persons in the workplace who were within six feet (or close proximity) for a prolonged period of time (more than a few minutes) within the previous 14 days. Attempt to contact this list regarding potential exposure. Maintain the infected employee's confidentiality consistent with medical information privacy laws and the Americans with Disabilities Act (ADA). Become familiar with the [NADA FAQ on the New Federal Emergency Leave Mandates](#), as an infected employee may qualify for emergency paid sick leave.

**Q Should employees who worked near an infected employee stay home?**

**A** Instruct such employees to consult with and follow the advice of their medical providers or local health departments regarding whether and for how long to stay home. If those resources are not available, instruct employees based on the [CDC's Public Health Recommendations for Community-Related Exposure](#) and follow [CDC guidance](#) if an employee develops new symptoms. The CDC's guidance may change over time, so check and revise dealership policies accordingly. Document thoroughly all employment-related decisions and keep copies of the government guidance used to make decisions. Again, become familiar with the [NADA FAQ on the New Federal Emergency Leave Mandates](#), as impacted employees may qualify for emergency paid sick leave.

**Q A dealership employee has a suspected but unconfirmed case of COVID-19 or has self-reported that they encountered someone who had a presumptive positive case of COVID-19. What should we do?**

**A** Follow the same precautions as noted above. Instruct employees to consult with and follow the advice of their medical providers or local health department. If those resources are not available, instruct employees to proceed based on the latest [CDC Public Health Recommendations for Community-Related Exposure](#) and follow [CDC guidance](#) if an employee develops symptoms. Document all employment-related decisions and keep copies of the government guidance used to make decisions. Again, become familiar with the [NADA FAQ on the New Federal Emergency Leave Mandates](#), as impacted employees may qualify for emergency paid sick leave.

**Q How do I address a dealership employee with a [higher risk of serious illness](#)?**

**A** The [CDC](#) currently recommends minimizing face-to-face contact between such employees and others, assigning work tasks that allow them to maintain a distance of six feet from other workers, customers and visitors, or teleworking if possible. According to the CFC, underlying conditions that increase risk for employees include, but are not limited to, chronic lung disease, moderate to severe asthma, hypertension, severe heart conditions, weakened immunity, severe obesity, diabetes, liver disease, and chronic kidney disease that requires dialysis. Such employees may also be entitled to paid sick leave, accrued vacation, or other forms of leave. High-risk workers should be encouraged to self-identify as employers should avoid making unnecessary medical inquiries. The [NADA FAQ on the New Federal Emergency Leave Mandates](#) notes that employees with a higher risk of serious illness may qualify for emergency paid sick leave.

**Q Can an employee refuse to come to work out of fear of COVID-19 exposure or infection?**

**A** It depends. Consult an attorney to address this question as it involves state law issues and fact-specific determinations. Generally, employees are only entitled to refuse to work if they believe they are in imminent danger. OSHA 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...” Imminent danger may exist if there is a:

1. threat of death or serious physical harm; or
2. 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 also be immediate or imminent, meaning an employee must believe that death or serious physical harm could occur within a short time (e.g. before OSHA could investigate the problem). Generally, most work conditions do not meet the elements required for an employee to refuse to work. Consult with an attorney before deciding whether an employee may refuse to work. In addition, review current [CDC guidance](#) when assessing potential workplace hazards and evaluating the adequacy of protective measures. Where protective measures are not as protective as those recommended by the CDC, OSHA will consider whether employees are exposed to recognized hazards and whether there are feasible means to abate them.

**Q Do employees who refuse to come to work because of fear of COVID-19 qualify for the new employee emergency paid leave mandates?**

**A** It depends. Fear of COVID-19 is not a qualifying reason under The Families First Coronavirus Response Act. However, an employee may separately fall into a qualifying reason under the Act. Consult the [NADA FAQ on the New Federal Emergency Leave Mandates](#).

**Q I have an employee who refuses to come to work because of fear of COVID-19 and does not qualify for paid emergency sick leave, what should I do?**

**A** First, take steps to ensure employees feel safe given the circumstances, by using the latest federal and state guidance and, if necessary, by working an attorney to make sure there is no “imminent danger” to the specific employee, as explained above. This is a fact-specific inquiry that can change with the evolving nature of the COVID-19 crisis. Second, carefully document any denials of requests for emergency paid leave. Consult the [NADA FAQ on the New Federal Emergency Leave Mandates](#). If possible, consider allowing non-essential workers to telework. Also, remind eligible employees of the availability of paid and unpaid leave. If an employee still refuses to return to the workplace, consider termination as a “last resort.” Note: it is illegal to retaliate against workers who report unsafe or unhealthful working conditions during a pandemic. Carefully document all steps taken to retain reluctant employees, working with an attorney as necessary.

**Q Can I require employees to get COVID-19 tests prior to returning to work?**

**A** Yes. The ADA generally prohibits employers from performing medical examinations. The CDC and state/local health authorities have acknowledged the community spread of COVID-19 and have issued attendant precautions permitting employers to require testing.

**Q During a pandemic, may an ADA-covered employer take its employees' temperatures to determine whether they have a fever?**

**A** Generally, measuring an employee's body temperature is a medical examination and would be disallowed under the ADA. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and have issued attendant precautions, employers may measure employees' body temperature. Many employers are electing instead to simply instruct their employees to not come to work if they have a high temperature. Importantly, as with all medical information, the fact that an employee has a fever or other possible COVID-19 symptoms is subject to ADA confidentiality requirements. Note: some people with virus infections, such as the 2009 H1N1 or COVID-19, may not have a fever.

*Suggestions and comments may be directed to [NADA Regulatory Affairs](#).*