

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



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# Why this webinar?

- High level of dealer interest
- Increasing and unfortunate need

# Who We Are and How This Will Go



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# BACKGROUND

- Good news- a majority of individuals recover.
- Coronaviruses are a family of virus that can cause fever, respiratory problems, and sometimes gastrointestinal issues.
- The latest novel coronavirus is being labeled COVID-19.
- Spreads through coughs and sneezes like a common cold. You can also likely acquire the virus after touching a surface containing the virus and touching your mouth. 1 person on average spreads it to 2-3 others.
- Individuals in more than 175 countries have been infected.
- Declared a pandemic on 3/11 and national emergency on 3/13.

# BACKGROUND

- Over 315,000 confirmed cases in the United States; Over 7,250 deaths.
- First possible community transmission case in U.S. confirmed on 2/27.
- CDC believes the you may be able to be spread COVID-19, like the Zika virus, prior to showing symptoms. Officials are not sure if the virus can be spread by handling or touching objects where the virus may have been present.
- CDC recently noted that masks should be worn if social distancing is not possible.
- Families First Coronavirus Response Act signed into law on Tuesday, March 18, 2020.

# Considerations for employers

- Educate all employees about how the coronavirus can be contracted.
- Establish a point of contact in human resources or elsewhere in your company for employees that have concerns.
- Remind employees about policies concerning absences and working from home, including vacation, sick pay, FMLA, unemployment, and short-term disability.
- Train supervisors on overreaction impacts and importance of adhering to antidiscrimination policies.
- Keep track of updates from CDC and WHO.
- Employee personal travel:
  - Employers cannot prohibit otherwise legal activity, such as personal travel abroad by an employee. This includes pregnant employees or those with a medical condition.
  - Employers should advise employees traveling to areas where Coronavirus is an issue to take proper precautions.



## Tests show new virus lives on some surfaces for up to 3 days



A grocery store employee disinfected the glass cover of a butcher counter to prevent the spread of the novel coronavirus in Budapest, Hungary. (Tamas Kovacs / Associated Press)

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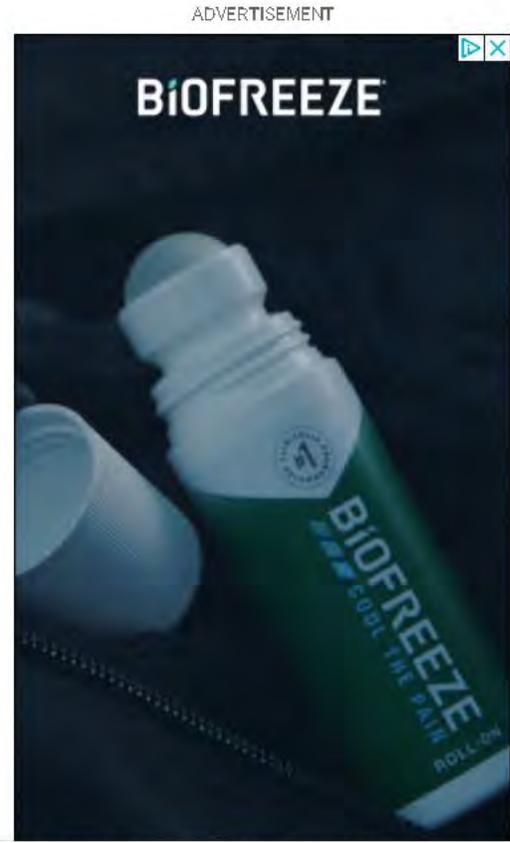
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# To fight coronavirus, L.A. restaurant chain takes temperatures before letting patrons dine



# TAKING TEMPERATURES – KEY CONSIDERATIONS

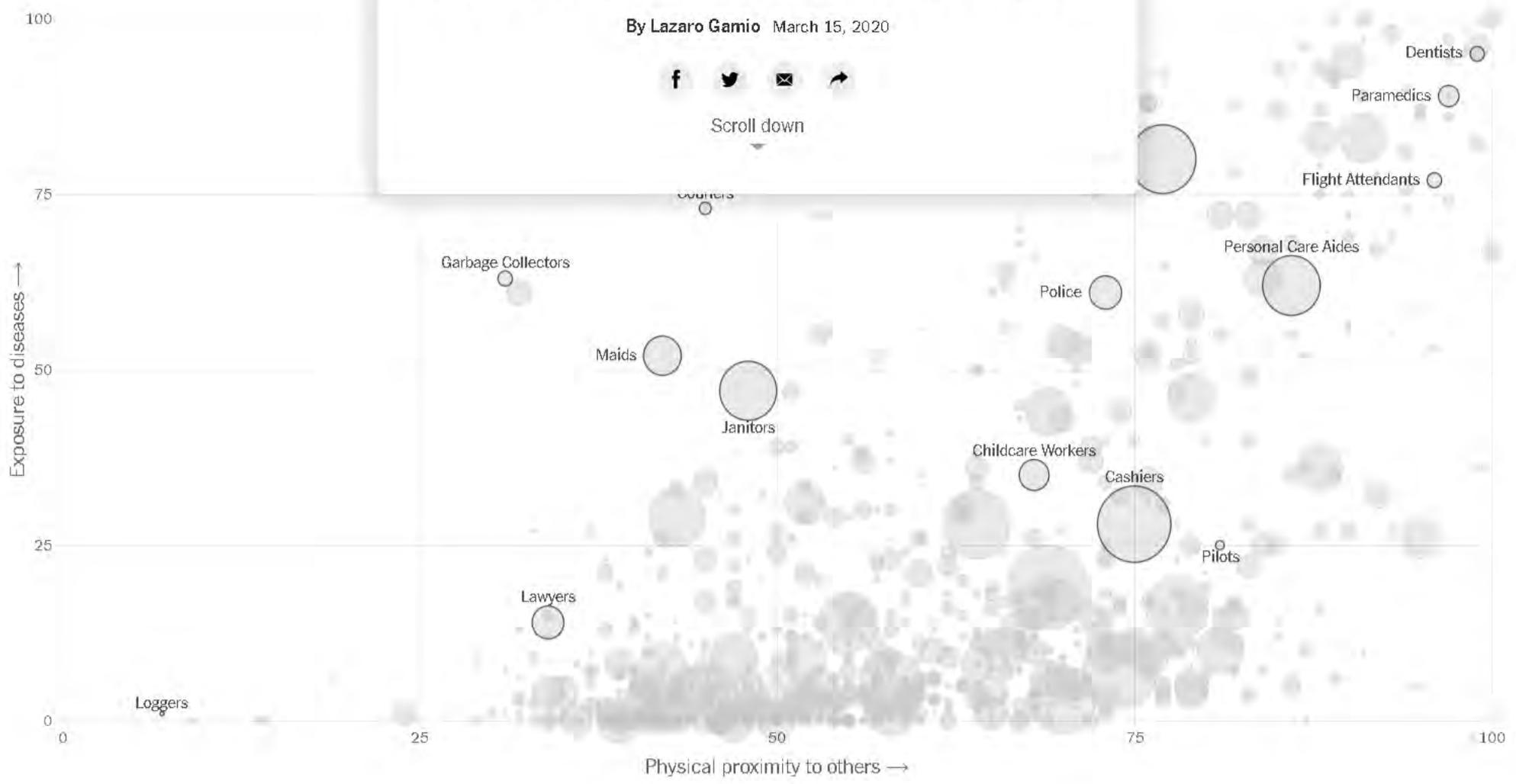
- Privacy of Medical Information of Employees
- Logistics
- Safety of Employees

# Greatest Coronavirus Risk

By Lazaro Gamio March 15, 2020



Scroll down





# Guidance on Preparing Workplaces for COVID-19

5.50 x 8.50 in

# PANDEMIC PREPAREDNESS IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT

## I. INTRODUCTORY INFORMATION

### A. PURPOSE

This technical assistance document provides information about Titles I and V of the [Americans with Disabilities Act](#) (ADA) and pandemic planning in the workplace.<sup>(1)</sup> It identifies established ADA principles that are relevant to questions frequently asked about workplace pandemic planning such as:

- How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce when an influenza pandemic appears imminent?
- When may an ADA-covered employer take the body temperature of employees during a pandemic?
- Does the ADA allow employers to require employees to stay home if they have symptoms of the pandemic influenza virus?
- When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

In one instance, to provide a complete answer, this document provides information about religious accommodation and Title VII of the Civil Rights Act of 1964.

### B. BACKGROUND INFORMATION ABOUT PANDEMIC INFLUENZA

A "pandemic" is a global "epidemic."<sup>(2)</sup> The world has seen four influenza pandemics in the last century. The deadly "Spanish Flu" of 1918 was followed by the milder "Asian" and "Hong Kong" flus of the 1950s and 1960s. While the SARS outbreak in 2003 was considered a pandemic "scare,"<sup>(3)</sup> the H1N1 outbreak in 2009 rose to the level of a pandemic.<sup>(4)</sup>

The U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), and the World Health Organization (WHO) are the definitive sources of information about influenza pandemics. The WHO classifies pandemic influenza into six phases<sup>(5)</sup> which describe how widely influenza is spreading around the world, but not the severity of the influenza symptoms. A WHO announcement that the world is in Pandemic Phase 6 (the highest phase) would indicate that there is sustained human-to-human transmission worldwide, and that the virus is no longer contained in a few geographic areas. It would not, however, automatically mean that the influenza symptoms are severe.

Pandemic planning and pandemic preparedness include everything from global and national public health strategies to an individual employer's plan about how to continue operations. Comprehensive federal government guidance advises employers about best practices for pandemic preparation and response with respect to influenza, specifically the 2009 H1N1 virus.<sup>(6)</sup> This EEOC technical assistance document focuses on implementing these strategies in a manner that is consistent with the ADA.

This guidance document was issued upon approval of the Chair of the U.S. Equal Employment Opportunity Commission

<b>OLC Control #</b>	EEOC-NVTA-2009-3
<b>Title</b>	Pandemic Preparedness in the Workplace and the Americans with Disabilities Act
<b>Date Issued</b>	9-Oct-09
<b>General Topics</b>	ADA/GINA
<b>Summary</b>	This document provides information about the ADA and pandemic planning in the workplace.
<b>Date Posted</b>	09-Oct-09
<b>Statutes/Authorities Involved</b>	ADA, Rehabilitation Act, 29 CFR Part 1630
<b>Audience</b>	Health Care Providers, Employees, Employers, Applicants, HR Practitioners
<b>Revision</b>	No

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

## II. RELEVANT ADA REQUIREMENTS AND STANDARDS

The ADA, which protects applicants and employees from disability discrimination, is relevant to pandemic preparation in at least three major ways. First, the ADA regulates employers' disability-related inquiries and

# Considerations for employers

- Educate your supply chain.
- Can you ask employees to stay at home if they exhibit symptoms of coronavirus or the flu? Yes. Ask them to seek medical attention and get tested for COVID-19.
- Can you ask an employee why he or she missed work? Yes. Can you ask them to leave work? Yes, under most circumstances.
- Many clients are requesting medical notes from employees prior to returning to work, especially that was a prior practice. However, EEOC and OSHA has cautioned employers that employees may not be able to reach physicians.

# Confirmed Employee Case of COVID-19

- Infected employee should remain at home until released by a physician or public health department (see alternative measures).
- Send home all employees who worked closely with that employee to ensure the infection does not spread.
- Before the infected employee departs, ask them to identify all individuals who worked in close proximity (within six feet) for a prolonged period of time (more than a few minutes) with them in the previous 14 days.

# Confirmed Employee Case of COVID-19

- When sending the employees home, do not identify by name the infected employee or you could risk a violation of confidentiality laws.
- The CDC provides that the employees who worked closely to the infected worker “should then self-monitor for [symptoms](#) (i.e., fever, cough, or shortness of breath).”
- How long should the employees who worked near the employee stay at home? Those employees should first consult and follow the advice of their healthcare providers or public health department regarding the length of time to stay at home. If those resources are not available, follow CDC guidelines.

# Confirmed Employee Case of COVID-19

- The [CDC also provides the following recommendations](#) for most non-healthcare businesses that have suspected or confirmed COVID-19 cases:
- It is recommended to close off areas used by the ill persons and wait as long as practical before beginning cleaning and disinfection to minimize potential for exposure to respiratory droplets. Open outside doors and windows to increase air circulation in the area. If possible, wait up to 24 hours before beginning cleaning and disinfection.
- Cleaning staff should clean and disinfect all areas (e.g., offices, bathrooms, and common areas) used by the ill persons, focusing especially on frequently touched surfaces.

# Confirmed Employee Case of COVID-19

- To clean and disinfect:
  - If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection (Note: “cleaning” will remove some germs, but “disinfection” is also necessary).
  - For disinfection, diluted household bleach solutions, alcohol solutions with at least 70% alcohol, and most common EPA-registered household disinfectants should be effective.
  - Gloves and gowns should be compatible with the disinfectant products being used.
  - Employers should develop policies for worker protection and provide training to all cleaning staff on site prior to providing cleaning tasks. Training should include when to use PPE, what PPE is necessary, how to properly don (put on), use, and doff (take off) PPE, and how to properly dispose of PPE.

# Confirmed Employee Case of COVID-19

- Notify all employees that work in the location/division/area where employee worked
- Let employees know the those who worked closely to infected employee have been told to go home
- Inform employees of sanitizing and cleaning efforts
- Remind them to seek medical attention if they exhibit symptoms

# Suspected But Unconfirmed Case of COVID-19

- Take the same precautions as noted above. Treat the situation as if the suspected case is a confirmed case for purposes of sending home potentially infected employees. Communicate with your affected workers to let them know that the employee has not tested positive for the virus but has been exhibiting symptoms that lead you to believe a positive diagnosis is possible.

# New CDC Guidance on Returning to Work

1. Time-since-illness-onset and time-since-recovery strategy (non-test-based strategy)\*
  - Persons with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue home isolation under the following conditions:
    - At least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and,
    - At least 7 days have passed since symptoms first appeared.

# New CDC Guidance on Returning to Work

- Test-based strategy (simplified from initial protocol) Previous recommendations for a test-based strategy remain applicable; however, a test-based strategy is contingent on the availability of ample testing supplies and laboratory capacity as well as convenient access to testing. Persons who have COVID-19 who have symptoms and were directed to care for themselves at home may discontinue home isolation under the following conditions:
  - Resolution of fever without the use of fever-reducing medications
  - Improvement in respiratory symptoms (e.g., cough, shortness of breath)
  - Negative results of an FDA Emergency Use Authorized molecular assay for COVID-19 from at least two consecutive nasopharyngeal swab specimens collected  $\geq 24$  hours apart.
- Individuals with laboratory-confirmed COVID-19 who have not had any symptoms may discontinue home isolation when at least 7 days have passed since the date of their first positive COVID-19 diagnostic test and have had no subsequent illness.

# Masking the problem?

- Under OSHA’s respiratory protection standard, a respirator must be provided to employees only “when such equipment is necessary to protect the health of such employees.”
- OSHA rules provide guidance on when a respirator is not required: “an employer may provide respirators at the request of employees or permit employees to use their own respirators, if the employer determines that such respirator use will not in itself create a hazard” (29 C.F.R. 1910.134(c)(2)).



# Can an employee simply refuse to work?

- An employee's right to refuse to do a task is protected if all of the following conditions are met:
  - Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so; and
  - You refused to work in “good faith.” This means that you must genuinely believe that an imminent danger exists; and
  - A reasonable person would agree that there is a real danger of death or serious injury; and
  - There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.



# Practical takeaways

- Encourage employees to wash their hands. Ensure that proper hand washing tools/soap is available.
- Educate your workforce about issues such as social distancing and how to identify symptoms.
- Allow employees to work from home if possible.
- Encourage employees to not return to work until their temperature drops below 100.4 Fahrenheit for at least 24 hours.
- Encourage employees to not touch their faces, eyes, and mouth.
- Increase custodial/sanitizing schedules to the extent possible.
- Encourage employees to contact a doctor if they develop symptoms of the coronavirus and be tested.

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT OVERVIEW

- Paid and Unpaid Leave for Coronavirus-Related Reasons
  - Emergency Paid Sick Leave
  - Emergency Family and Medical Leave Act (Expands FMLA)
- Emergency Unemployment Insurance Stabilization And Access Act of 2020
  - Unemployment Insurance Funding
- Reimbursement to Employers as Tax Credits



# EMERGENCY PAID SICK LEAVE

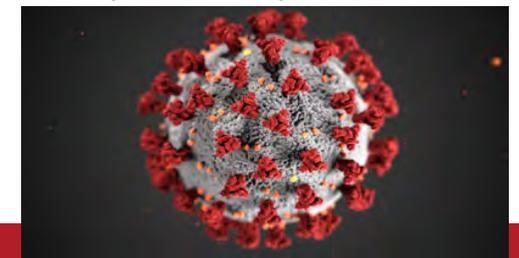
# EMERGENCY PAID SICK LEAVE

- Employers with 1-499 employees
  - Employees are counted if in the United States, the District of Columbia, or any territory or possession of the United States.
- Any employee who works for employer is eligible
  - No minimum days/hours of employment
- If the EMPLOYEE is sick, employee is entitled to:
  - Full-time Employees – 80 hours of paid sick leave
  - Part-time Employees – Paid based on the average number of hours the employee worked for the six months prior to taking this paid sick leave.
    - Or, if employed for less than 6 months, the average number of hours per week the employee would normally be scheduled

# EMERGENCY PAID SICK LEAVE

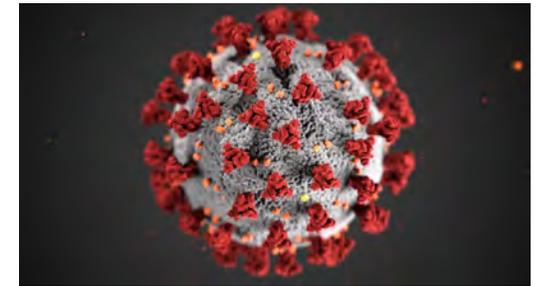
## Qualifying Reasons

- Must provide paid sick time “to the extent the employee is unable to work (or telework) due to a need for leave because:
- The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The employee is caring for an individual who is subject to an order or self-quarantine as described above.
- The employee is caring for a son or daughter if school or child care is closed/unavailable.
- The employee is experiencing “any other substantially similar condition” specified by HHS (catch all).



# EMERGENCY PAID SICK LEAVE

- At employee’s regular rate for qualifying reasons (1), (2) or (3)
  - Compensated at HIGHER of their regular rate, federal minimum wage or local minimum wage
- At 2/3 the employee’s regular rate for qualifying reasons (4), (5) or (6)
- Capped at the following levels:
  - \$511 per day and \$5,110 in the aggregate per person for qualifying reasons (1), (2) and (3).
  - \$200 per day and \$2,000 in the aggregate per person for qualifying reasons (4), (5) and (6).



# A FEW THINGS TO KEEP IN MIND

## State and Local Laws

- Many states and local jurisdictions have their own paid sick days and family and medical leave laws, which may be in addition to these new federal requirements.
- Many states and locals are working quickly to amend their laws and/or add new requirements as well.



**Questions?**

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