

## Update: “Pandemic” Label for COVID-19 by WHO Triggers New ADA Rules for Employers

On March 11, 2020, the World Health Organization (WHO) dubbed the Coronavirus a global “pandemic,” claiming the health emergency has risen to “the highest level.” It's the first time the WHO has called an outbreak a “pandemic” since the H1N1 “swine flu” in 2009.

Because COVID-19 has now been labeled a pandemic of the highest level, employers need to be aware of specific rules that are now applicable under the Americans With Disabilities Act (ADA).

The U.S. Equal Employment Opportunity Commission (EEOC) has issued guidance for employers to address what can legally be asked of employees during a pandemic. The EEOC’s Guidance can be found [here](#).

For your ease of reference, below is quick reference summary of the EEOC’s answers to common questions during a pandemic. **Of course, employers should review the EEOC’s Guidance in detail to fully understand what is (or is not) permissible during a pandemic.**

1. **May an employer send employees home if they display influenza-like symptoms during a pandemic?** Yes.
2. **During a pandemic, how much information may an employer request from employees who report feeling ill at work or who call in sick?** Employers may ask employees if they are experiencing influenza-like symptoms, such as fever or chills and a cough or sore throat. Employee confidentiality must be maintained.
3. **During a pandemic, may an employer take its employees’ temperatures to determine whether they have a fever?** Yes.
4. **When an employee returns from travel during a pandemic, must an employer wait until the employee develops influenza symptoms to ask questions about exposure to pandemic influenza during the trip?** No.
5. **During a pandemic, may an employer ask employees who do not have influenza symptoms to disclose whether they have a medical condition that the CDC says could make them especially vulnerable to influenza complications?** Generally, no.
6. **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.

7. **During a pandemic, may an employer require its employees to adopt infection-control practices, such as regular hand washing, at the workplace? Yes.**
8. **During a pandemic, may an employer require its employees to wear personal protective equipment (e.g., face masks, gloves, or gowns) designed to reduce the transmission of pandemic infection? Yes.** But be prepared to provide accommodations, if needed, *e.g.*, non-latex gloves.
9. **May an employer require all of its employees to take the influenza vaccine regardless of their medical conditions or their religious beliefs during a pandemic? No,** but you can encourage your employees to get vaccinated.
10. **During a pandemic, must an employer continue to provide reasonable accommodations for employees with known disabilities that are unrelated to the pandemic, barring undue hardship? Yes.**
11. **During a pandemic, may an employer ask an employee why he or she has been absent from work if the employer suspects it is for a medical reason? Yes.**

As always, it is advisable for any employer to consult with experienced employment counsel when addressing these issues with your workforce.

We will continue to monitor the situation and provide periodic [updates](#) as new information is made available.