

Frequently Asked Questions

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ND SMART RESTART - EMPLOYER/EMPLOYEE

Do I need to have everyone in my business wear masks?

There are industry specific requirements depending on the closeness you will be to your clients and conditions of the business. Please review industry specific guidelines for these recommendations.

Will cloth masks be adequate for non-health related industries?

Specific industries are making recommendations on mask coverage (see industry specific recommendations.) CDC (<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>) recommends that everyone wear a cloth face covering in public settings where other social distancing measures are difficult to maintain, especially in areas of significant community-based transmission. OSHA (<https://www.osha.gov/Publications/OSHA3996.pdf>) recommends allowing workers to wear masks over their nose and mouth to prevent them from spreading the virus.

Can employers require employees to get tested prior to returning to work?

The Equal Employment Opportunity Commission (EEOC) updated its guidance (https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm) on April 23 on the Americans with Disabilities Act (ADA) and coronavirus, explaining that employers may screen employees for COVID-19. Any mandatory medical test must be job-related and consistent with business necessity.

Can I send employees home if they are experiencing or showing symptoms?

Yes. Employees should be sent home if they are showing COVID-19 symptoms even if the employee is not self-reporting

Can I ask an employee if they are experiencing symptoms?

The federal government has issued guidance directing that employers may ask about COVID-19 symptoms at this time

Can I send employees home even if they are not experiencing symptoms?

Employees may be required to stay home if they have been in close contact with someone with COVID-19, or if they have traveled from an area with widespread transmission.

Employers may also choose to lay off employees for any non-discriminatory reason.

May an employer encourage or require employees to telework (work from home) as an infection control strategy?

Yes. An employer may encourage or require employees to telework as an infection-control or prevention strategy, including based on timely information from public health authorities about pandemics, public health emergencies, or other similar conditions.

But employers must not single out employees either to telework or to continue reporting to the workplace on a basis prohibited by any of the Equal Employment Opportunity laws (e.g., race, gender, country of origin).

What if a business opens but an employee doesn't feel safe coming back to work? Are there any protections for them if they don't feel safe returning to work?

Under the Occupational Safety and Health Act (<https://www.osha.gov/laws-regs/oshact/completeoshact>) (OSHA), employees may refuse work if they "reasonably believe they are in imminent danger." That fear typically includes the threat of death or serious physical harm. Generalized fear about the virus, that's not based on fact, would not likely be sufficient to refuse to work. However, if the workplace currently has a number of confirmed cases of COVID-19, their fears may be justified.

For workers who are at higher risk for negative outcomes if they contract COVID-19, such as those with underlying medical conditions or workers who are immunocompromised, even generalized fears may be legitimate. Businesses should work with these staff members to alter the work environment as much as possible to mitigate risk, if they can.

What COVID health related questions can employers ask employees?

- Positive result for, or other diagnosis with, COVID-19;
- Symptoms of infection with COVID-19, e.g., fever of or over 100.4°F, cough, shortness of breath, sore throat;
- “Close contact” (as defined by the Centers for Disease Control) with any person who has tested positive for, or has otherwise been diagnosed with, COVID-19 infection within the preceding 14 days;
- Whether the employee has been asked to self-quarantine by a health official within the preceding 14 days;
- Whether the employee has traveled to, or stopped over in, a country for which the CDC has issued a Level 3 travel health notice

Can I take an employee’s temperature?

Yes. But it is only permissible because COVID-19 has been declared a pandemic. Also, please remember COVID-19 is highly contagious. It may be best to have employees take their own temperature and text or e-mail you the results before they come in. If you or an employee is going to take the temperature of another worker, you should consult with a physician on how best to accomplish this without risking infection of the person taking the temperature of employees.

How will the re-opening affect unemployment insurance? Will unemployed be required to again begin looking for work?

After re-opening, the same unemployment insurance programs will remain available. As is the case currently, individuals unemployed due to the pandemic will potentially remain eligible for unemployment insurance benefits. The primary impact of reopening will be that if suitable work is available because an individual’s employer has reopened, but the individual chooses to not return to employment, they may be found ineligible for benefits. Eligibility for future benefit payments is done on a case-by-case basis and could vary by situation. Reopening, or the expiration of existing Executive Orders relating specifically to business operations, will not affect the Governor’s Executive Orders relating to items such as the temporary suspension of the unemployment insurance work search requirement. These Orders will remain in force until the Governor specifically rescinds them. There is not a sunset or expiration date on these particular orders.

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