

COVID-19: Be Prepared for a Second Wave

A checklist for food and nutrition services in healthcare and senior living settings



As hospitals, senior living communities, nursing homes and community-based meal programs plan for a resurgence or a second wave of COVID-19, or any infectious disease outbreak, these should be primary areas of focus:

- ▶ **INFECTION CONTROL PROTOCOLS**
- ▶ **STAFFING AND EMPLOYEE SAFETY**
- ▶ **MENU PLAN**
- ▶ **OPERATIONS**
 - Back-of-house procedures
 - Communal dining
 - In-room dining
 - Retail
 - Catering

Use this planning checklist to prepare for an occurrence of an infectious disease in your community.

INFECTION CONTROL PROTOCOLS

- ☐ Keep informed on your organization's policies and the Centers for Disease Control best practices for managing specific infectious disease.
- ☐ Perform infection control self-audits to uncover areas in need of improvement.
- ☐ Define and train on policies and procedures (P&P) for standard and transmission-based precautions, including:
 - ☐ Personal protection equipment (PPE) policy for food and nutrition services staff
 - ☐ Meal ordering and delivery policy for isolation and non-isolation rooms
 - ☐ Use of regular or disposable dishware and eating utensils
 - ☐ Special handling for meal trays in isolation rooms
 - ☐ Cleaning/sanitizing/disinfecting of meal delivery carts
- ☐ Create a communication plan to reinforce standard and transmission-based precautions, including staff training and posting signs.
- ☐ Forecast demand and confirm supply for hand sanitizer, cleaning chemicals and PPE.
- ☐ Streamline the number of vendors to limit infection exposure.
- ☐ Define phased restrictions for vendor and supply delivery policies. Review with prime vendors:
 - ☐ Dedicated entry door for screening
 - ☐ Designated area for back-door delivery unloading, if necessary
 - ☐ If using back-door delivery, designate a team member to contact once the order arrives at the location

STAFFING AND EMPLOYEE SAFETY

- ☐ Develop a plan for staffing shortage.
- ☐ Develop a consistent staffing plan to reduce exposure of your team members to patients/residents.
- ☐ Create a schedule to manage physical distancing during employee breaks.
- ☐ Develop a plan to aid in physical distancing of employees in back-of-house.
- ☐ Reinforce P&P for:
 - ☐ Screening employees
 - ☐ Signs and symptoms that must be reported to a supervisor
 - ☐ When to stay at home if sick
 - ☐ Personal hygiene
 - ☐ PPE while at work
- ☐ Document any emergency duties in job descriptions.
- ☐ Plan for designated employees as leaders in key areas like cleaning, hand-washing and social distancing.
- ☐ Determine an employee communication plan for consistent messaging of up-to-date information:
 - ☐ Designate an area for information boards
 - ☐ Schedule daily huddles/check-ins
 - ☐ Collaborate with your marketing team to ensure appropriate use of logo on all safety signs
 - ☐ Include communication from key stakeholders such as infection prevention and nursing leaders

MENU PLAN

- ☐ Design alternative patient/resident and retail menus for safe physical distancing and potential disruption in staffing levels or supply issues:
 - ☐ **Menu A:** Streamlined variety while still offering a reasonable choice
 - ☐ **Menu B:** Grab-and-go menu/delivery-only menu
 - ☐ **Menu C:** Convenience menu for severe staffing shortage
- ☐ Adjust or eliminate “cook-to-order” and “self-service” options.
- ☐ Adjust recipe yields and production counts based on forecast scenarios.
- ☐ Adjust order quantities for menus based on forecast scenarios.
- ☐ Be prepared to adjust menus depending on product availability.

OPERATIONS: BACK-OF-HOUSE

- ☐ Document P&P for heightened infection control protocols, including when to implement them. This includes increased frequency of:
 - ☐ Sanitizing/disinfecting high-touch areas
 - ☐ Checking warewashing chemicals and temperatures
 - ☐ Handwashing
- ☐ Document P&P for restrictions of who is allowed in the kitchen.
- ☐ Identify the need, then source for mobile hand-washing or sanitizer stations.
- ☐ Assure availability of supplies and equipment, such as room trays and delivery carts.

OPERATIONS: COMMUNAL DINING

- ☐ Determine a meal delivery plan if communal dining must close down.
- ☐ Develop dining room layout for physical distancing:
 - ☐ Remove tables/chairs or mark for non-use
 - ☐ Designate storage area if tables/chairs are to be removed

OPERATIONS: COMMUNAL DINING *(continued)*

- ☐ Create P&P for heightened sanitizing/disinfection, when indicated.
- ☐ Create P&P for screening people eating in the dining room when indicated.
- ☐ Have a source for signage for physical distancing and hand-washing reminders.
- ☐ Identify the need and have a source for mobile hand-washing or sanitizer stations.
- ☐ Develop a seating or reservation process that allows you to serve the anticipated number of guests:
 - ☐ For long-term care (LTC), consider options that allow all residents to safely enjoy at least one meal a day in the dining room
- ☐ Finalize a sample table top setting to minimize the need for sanitizing between settings (i.e.: remove table tents, condiments, napkin dispensers, etc.).
- ☐ Designate a waiting room with ample space for physical distancing.
- ☐ Have a plan for disposable menus or a source for digital menus.
- ☐ Research reservation systems.

OPERATIONS: IN-ROOM DINING FOR LTC

- ☐ Determine an in-room meal delivery schedule for times when communal dining is limited or not allowed.
- ☐ Plan ideas to encourage engagement with each resident, such as daily inspirational messages or comedy cards with meals.
- ☐ Plan sufficient support for residents who need assistance with eating.

OPERATIONS: CATERING

- ☐ Plan menu options that are pre-portioned and wrapped for individual use.
- ☐ Forecast demand for to-go containers.
- ☐ Identify the need and source for mobile hand-washing or sanitizer stations.

OPERATIONS: RETAIL

- ☐ Determine what retail outlets will be temporarily closed during the outbreak, and plan to adjust staffing needs.
- ☐ Rethink menu options and service style to influence reduced time in line for guests, keeping them apart when they are in line and getting them out of the retail space faster.
- ☐ Do an assessment of equipment needs and capacity.
- ☐ Research customer pre-order and pre-payment technology options if you don't already have them.
- ☐ Have a plan to minimize contact at payment:
 - ☐ Enact a policy for not accepting cash, when indicated
 - ☐ Have guests swipe their own cards
 - ☐ Have a source identified to supply plexiglas barriers
- ☐ Plan a designated order pickup area.
- ☐ Have a source for signage for physical distancing and hand-washing reminders.
- ☐ Research to-go containers and forecast demand.
- ☐ Develop a plan for a micro-market to offer meal kits and essential items for employees.
- ☐ Develop a delivery plan if you don't do it already.



Emergency Preparedness Starts with Planning

Now is the time to make sure your team isn't caught by surprise.

Benjamin Franklin once said, "By failing to prepare, you are preparing to fail." While no one could have completely prepared for the pandemic, now is a good time to look at your community's [emergency planning](#) and ask some questions:

- How did it impact foodservice in our community?
- What grade does our foodservice operation deserve?
- What could we do better?

While COVID-19 was a once-in-a-lifetime emergency, other emergencies are possible. You play a key role in working with your management team when it comes to supplying food to patients, residents and staff when sheltering in place or during an evacuation. Your planning should include having an emergency menu in place, along with the supplies and plans to make it work.

No two emergencies are alike

You need a plan because emergencies often bring confusion. Avoid chaos by communicating your well-thought-out plan so people spring into action with a purpose. An emergency can be as minor as a delayed delivery or a staff shortage, or as major as a tornado or blizzard.

You need a plan for every situation, one you can adjust depending on the severity of the emergency. Small emergencies may require a minor menu tweak, such as swapping meals or substituting a recipe. In such instances there are no worries about maintaining the nutritional integrity of the menu over the course of the week.

Major emergencies require extensive planning. Every community has an emergency plan (EP), and the foodservice director must assure the menu plan is ready. The emergency menu needs to be a minimum of a three-day plan for meals that meet the nutrition and hydration needs for all residents (and staff members) in your care, including those with allergies and consistency modified diets.

When a larger disaster strikes, you should strive for positive nutrition outcomes. Menus should mirror those served during regular operation. The need for medical and texture modifications doesn't disappear during such emergencies.

Your planning should consider how the menu can be streamlined to minimize the number of items needing preparation, yet still meet the critical medical and texture modification needs of patients/residents. Your plan should consider:

- What if the power is out?
- What if equipment is damaged or destroyed?
- What if my trained staff isn't available to use the equipment?
- How will we prepare food if we're evacuated to another location?

A foodservice director must address these questions and many others to create an adequate emergency menu and plan for supplies to make it work.

Have a plan that meets emergency needs

The general rule is to have all menu foods and one gallon of water per person per day to meet minimum needs. The emergency food supply should be shelf stable, but don't rush into emergency stock. Use perishable foods first. A refrigerator will keep food cold for about four hours if the door is kept closed. A full freezer will hold its temperature for about 48 hours. When power is restored, examine the condition of food in the cooler and freezer.

Consider freeze dried foods, which require minimal storage, for your emergency menu. Emergency food supply products from companies such as Meals for All have a 10-year shelf life and are easily transported. Along with food, provide an easily transportable supply of water too. Large water

containers are heavy and hard to move. Companies such as Blue Can can provide 50-year shelf-stable emergency water.

Recognize that widespread emergencies affect everyone, and your distributor may not be able to meet last-minute requests when demand exceeds supply. Blocked roads also can prevent delivery.

This is why it's important to have a minimum three-day emergency supply of food and water in stock. Unless you use dehydrated or freeze-dried products, your emergency supplies must be rotated so nothing remains on the shelf longer than a year.

Emergency extras can't be overlooked

Food and water are mandatory, but other items become important in a crisis. Consider:

- Is there an alternate source of power to heat food and make coffee and tea?
- How will you open cans without power?
- Do you have containers to serve the food and beverages?
- Can you maintain food safety?
- Do you have hand sanitizer, paper towels and napkins?

Some helpful items for your emergency plan include: a hand grinder for consistency modified food, a manual can opener, disposable plates, cups and plasticware (dirty dishes can't be cleaned without power or a water supply).

Who will execute your emergency plan?

You've thought through the possibilities and planned your supplies. Now you need to prepare your team so they're in charge when an emergency happens.

Everyone needs to be trained. Emergencies can happen any time of day and without warning. You could be left with staff shortages, power outages, injured people, the need to feed your own staff as well as residents/patients. Your team should be prepared by knowing:

- How will food and water be relocated?
- Is there a generator for backup power and, if so, can you use it to keep food cold and run kitchen appliances?
- Where is the list of all nutrition at-risk patients/residents and their care plan?
- Do you have supplies of prepared pureed foods, supplements and tube feeding formulas and supplies?

As you plan to rotate food products, create a food security plan to avoid missing needed foods. When completed, print out the disaster plan and the confidential, up-to-date nutrition at-risk list—you can't assume your computer or wi-fi will operate.

The pandemic showed us heroes don't wear capes or have superpowers. The simple act of planning and assuring care and comfort is heroic. By making a plan, you are providing the best outcome possible for the people in your care, and you will be their hero.

How do I get started?

- Schedule a meeting with your management team
- Choose a three-day or seven-day emergency menu and a convenience menu (contact NRC@gfs.com)
- Stock either rotating food product or 10-year shelf-stable emergency food supply (such as Meals for All)

Written by [Gordon Food Service Contributors](#)





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Pandemic Preparedness in the Workplace: Employer Responsibilities and Rights Under the ADA



BusinessManagement
DAILY

CDC Advice: Employee Health Protections

Starting in January 2020, an outbreak of coronavirus (COVID-19) started in China and began to spread worldwide. As a result, several agencies of the U.S. government have advised employers on how to respond to the threat.

The U.S. Centers for Disease Control (CDC) offers this advice to employers for keeping employees healthy and preventing the spread of the virus:

Actively encourage sick employees to stay home. Employees who have symptoms of acute respiratory illness (typically fever, cough and shortness of breath) should stay at home and away from work until they are free of fever and other symptoms for at least 24 hours.

Ensure your sick-leave policies are flexible enough to make employees feel they can stay home without risking their jobs. Instruct supervisors not to retaliate against employees who take sick leave. Do not require a health care provider's note for employees who are sick with acute respiratory illness; doctors' offices may be too overwhelmed to provide notes.

Your policy should explicitly permit employees to stay home to care for sick family members.

Segregate sick employees. If employees appear to have acute respiratory illness symptoms when they arrive for work or become sick during the day, send them home immediately.

If an employee is confirmed to have COVID-19, inform co-workers of their possible exposure, but maintain confidentiality as required by the ADA.

Emphasize good hygiene. Tell employees to regularly wash their hands with soap and water for at least 20 seconds or clean their hands with an alcohol-based hand sanitizer that contains at least 60% alcohol. Provide soap and water, alcohol-based wipes, tissues and no-touch wastebaskets.

Remind employees to cover their noses and mouths with a tissue when coughing or sneezing (or an elbow if no tissue is available). They should dispose of used tissues immediately.

The CDC offers posters describing good hygiene practices that you can display in your workplace at www.cdc.gov/coronavirus/2019-ncov/communication/.

Perform routine cleaning. Regularly clean all frequently touched surfaces in the workplace, such as workstations, countertops and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. At this time, the CDC does not recommend additional disinfection beyond routine cleaning.

Provide disposable wipes so employees can wipe down commonly used surfaces (for example, doorknobs, keyboards, remote controls, desks) before each use.

Advise employees to take precautions before traveling. Tell them to check the [CDC's Traveler's Health Notices](#) for the latest country-by-country guidance and recommendations.

Advise employees to check themselves for symptoms of acute respiratory illness before starting travel and notify their supervisor and stay home if they are sick.

If outside the United States, sick employees should follow your policy for obtaining medical care or contact a health care provider or overseas medical assistance company to help them find an appropriate health care provider in that country. A U.S. consular officer can help locate health care services, but cannot evacuate or provide care to private U.S. citizens.

Online resource: Find links to more CDC resources for employers at www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html.

EEOC Advice:

Coronavirus and the Americans with Disabilities Act (ADA)

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 medical examinations for all applicants and employees, including those who do not have ADA disabilities. Second, the ADA prohibits covered employers from excluding individuals with disabilities from the workplace for health or safety reasons unless they pose a "direct threat" (i.e. a significant risk of substantial harm even with reasonable accommodation). Third, the ADA requires reasonable accommodations for individuals with disabilities (absent undue hardship) during a pandemic.

This section summarizes these ADA provisions. The subsequent sections answer frequently asked questions about how they apply during an influenza pandemic. The answers are based on existing EEOC guidance regarding disability-related inquiries and medical examinations, direct threat, and reasonable accommodation.

A. DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMINATIONS

The ADA prohibits an employer from making **disability-related inquiries** and requiring **medical examinations** of employees, except under limited circumstances, as set forth below.

1. Definitions: Disability-Related Inquiries and Medical Examinations

An inquiry is “**disability-related**” if it is likely to elicit information about a disability. For example, asking an individual if his immune system is compromised is a disability-related inquiry because a weak or compromised immune system can be closely associated with conditions such as cancer or HIV/AIDS. By contrast, an inquiry is not disability-related if it is not likely to elicit information about a disability. For example, asking an individual about symptoms of a cold or the seasonal flu is not likely to elicit information about a disability.

A “**medical examination**” is a procedure or test that seeks information about an individual’s physical or mental impairments or health. Whether a procedure is a medical examination under the ADA is determined by considering factors such as whether the test involves the use of medical equipment; whether it is invasive; whether it is designed to reveal the existence of a physical or mental impairment; and whether it is given or interpreted by a medical professional.

2. ADA Standards for Disability-Related Inquiries and Medical Examinations

The ADA regulates disability-related inquiries and medical examinations in the following ways:

- **Before a conditional offer of employment:** The ADA prohibits employers from making disability-related inquiries and conducting medical examinations of applicants before a conditional offer of employment is made.
- **After a conditional offer of employment, but before an individual begins working:** The ADA permits employers to make disability-related inquiries and conduct medical examinations if all entering employees in the same job category are subject to the same inquiries and examinations.
- **During employment:** The ADA prohibits employee disability-related inquiries or medical examinations unless they are job-related and consistent with business necessity. Generally, a disability-related inquiry or medical examination of an employee is job-related and consistent with business necessity when an employer has a reasonable belief, based on objective evidence, that :
 - An employee’s ability to perform essential job functions will be impaired by a medical condition; or
 - An employee will pose a direct threat due to a medical condition.

This reasonable belief “must be based on objective evidence obtained, or reasonably available to the employer, prior to making a disability-related inquiry or requiring a medical examination.”⁴

All information about applicants or employees obtained through disability-related inquiries or medical examinations must be kept **confidential**. Information regarding the medical condition or history of an employee must be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record.

B. DIRECT THREAT

A “**direct threat**” is “a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” If an individual with a disability poses a direct threat despite reasonable accommodation, he or she is not protected by the nondiscrimination provisions of the ADA.

Assessments of whether an employee poses a direct threat in the workplace must be based on objective, factual information, “not on subjective perceptions . . . [or] irrational fears” about a specific disability or disabilities.⁴ The EEOC’s regulations identify four factors to consider when determining whether an employee poses a direct threat: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that potential harm will occur; and (4) the imminence of the potential harm.

DIRECT THREAT AND PANDEMIC INFLUENZA

Direct threat is an important ADA concept during an influenza pandemic.

Whether pandemic influenza rises to the level of a direct threat depends on the severity of the illness. If the CDC or state or local public health authorities determine that the illness is like seasonal influenza or the 2009 spring/summer H1N1 influenza, it would not pose a direct threat or justify disability-related inquiries and medical examinations. By contrast, if the CDC or state or local health authorities determine that pandemic influenza is significantly more severe, it could pose a direct threat. The assessment by the CDC or public health authorities would provide the objective evidence needed for a disability-related inquiry or medical examination.

During a pandemic, employers should rely on the latest CDC and state or local public health assessments. While the EEOC recognizes that public health recommendations may change during a crisis and differ between states, employers are expected to make their best efforts to obtain public health advice that is contemporaneous and appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information.

C. REASONABLE ACCOMMODATION

A “**reasonable accommodation**” is a change in the work environment that allows an individual with a disability to have an equal opportunity to apply for a job, perform a job’s essential functions, or enjoy equal benefits and privileges of employment.

An accommodation poses an “**undue hardship**” if it results in significant difficulty or expense for the employer, taking into account the nature and cost of the accommodation, the resources available to the employer, and the operation of the employer’s business.⁴ If a particular accommodation would result in an undue hardship, an employer is not required to provide it but still must consider other accommodations that do not pose an undue hardship.

Generally, the ADA requires employers to provide reasonable accommodations for known limitations of applicants and employees with disabilities.

ADA Q&A: **EMPLOYER PRACTICES FOR PANDEMIC PREPAREDNESS**

The following Questions and Answers are designed to help employers plan how to manage their workforce in an ADA-compliant manner before and during a pandemic.

A. BEFORE A PANDEMIC

HHS advises employers to begin their pandemic planning by identifying a “pandemic coordinator and/or team with defined roles and responsibilities for preparedness and response planning.” This team should include staff with expertise in all equal employment opportunity laws. Employees with disabilities should be included in planning discussions, and employer communications concerning pandemic preparedness should be accessible to employees with disabilities.

When employers begin their pandemic planning, a common ADA-related question is whether they may survey the workforce to identify employees who may be more susceptible to complications from pandemic influenza than most people.

1. Before an influenza pandemic occurs, may an ADA-covered employer ask an employee to disclose if he or she has a compromised immune system or chronic health condition that the CDC says could make him or her more susceptible to complications of influenza?

No. An inquiry asking an employee to disclose a compromised immune system or a chronic health condition is disability-related because the response is likely to disclose the existence of a disability.⁴ The ADA does not permit such an inquiry in the absence of objective evidence that pandemic symptoms will cause a direct threat. Such evidence is completely absent before a pandemic occurs.

2. Are there ADA-compliant ways for employers to identify which employees are more likely to be unavailable for work in the event of a pandemic?

Yes. Employers may make inquiries that are not disability-related. An inquiry is not disability-related if it is designed to identify potential non-medical reasons for absence during a pandemic (e.g., curtailed public transportation) on an equal footing with medical reasons (e.g., chronic illnesses that increase the risk of complications). The inquiry should be structured so that the employee gives one answer of “yes” or “no” to the whole question without specifying the factor(s) that apply to him. The answer need not be given anonymously.

Below is a sample ADA-compliant survey that can be given to employees to anticipate absenteeism.

ADA-COMPLIANT PRE-PANDEMIC EMPLOYEE SURVEY

Directions: Answer “yes” to the whole question *without specifying the factor that applies to you*. Simply check “yes” or “no” at the **bottom of the page**.

In the event of a pandemic, would you be unable to come to work because of any one of the following reasons:

- If schools or day-care centers were closed, you would need to care for a child;
- If other services were unavailable, you would need to care for other dependents;
- If public transport were sporadic or unavailable, you would be unable to travel to work; and/or;
- If you or a member of your household fall into one of the categories identified by the CDC as being at high risk for serious complications from the pandemic influenza virus, you would be advised by public health authorities not to come to work (e.g., pregnant women; persons with compromised immune systems due to cancer, HIV, history of organ transplant or other medical conditions; persons less than 65 years of age with underlying chronic conditions; or persons over 65).

Answer: YES _____, NO _____

3. May an employer require *new entering employees* to have a post-offer medical examination to determine their general health status?

Yes, if all entering employees in the same job category are required to undergo the medical examination and if the information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record.

Example A: An employer in the international shipping industry implements its pandemic plan when the WHO and the CDC confirm that a pandemic may be imminent because a new influenza virus is infecting people in multiple regions, but not yet in North America. Much of the employer's international business is in the affected regions. The employer announces that, effective immediately, its post-offer medical examinations for all entering international pilots and flight crew will include procedures to identify medical conditions that the CDC associates with an increased risk of complications from influenza. Because the employer gives these medical examinations post-offer to all entering employees in the same job categories, the examinations are ADA-compliant.

4. May an employer rescind a job offer made to an applicant based on the results of a post-offer medical examination if it reveals that the applicant has a medical condition that puts her at increased risk of complications from influenza?

No, unless the applicant would pose a direct threat within the meaning of the ADA. A finding of "direct threat" must be based on reasonable medical judgment that relies on the most current medical knowledge and/or the best available evidence such as objective information from the CDC or state or local health authorities.

The finding must be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job, after considering, among other things, the imminence of the risk; the severity of the harm; and the availability of reasonable accommodations to reduce the risk. Before concluding that an individual poses a direct threat, the employer must determine whether a reasonable accommodation could reduce the risk below the direct threat level.

Example B: The same international shipping employer offers a financial position at its U.S. headquarters to Steve. This position does not involve regular contact with flight crew or travel to the affected WHO region. Steve's post-offer medical examination (which is the same examination given to all U.S. headquarters employees) reveals that Steve has a compromised immune system due to recent cancer treatments.

Given the fact that the position does not involve regular contact with flight crew or travel, and that the influenza virus has not spread to North America, Steve would not face a significant risk of contracting the virus at work and does not pose a "direct threat" to himself or others in this position. Under the ADA, it would be discriminatory to rescind Steve's job offer based on the possibility of an influenza pandemic.

B. DURING AN INFLUENZA PANDEMIC

The following questions and answers discuss employer actions when the WHO and the CDC report an influenza pandemic.

5. May an ADA-covered employer send employees home if they display influenza-like symptoms during a pandemic?

Yes. The CDC states that employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. Advising such workers to go home is not a disability-related action if the illness is akin to seasonal influenza or the 2009 spring/summer H1N1 virus. Additionally, the action would be permitted under the ADA if the illness were serious enough to pose a direct threat.

6. During a pandemic, how much information may an ADA-covered employer request from employees who report feeling ill at work or who call in sick?

ADA-covered employers may ask such employees if they are experiencing influenza-like symptoms, such as fever or chills and a cough or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

If pandemic influenza is like seasonal influenza or spring/summer 2009 H1N1, these inquiries are not disability-related. If pandemic influenza becomes severe, the inquiries, even if disability-related, are justified by a reasonable belief based on objective evidence that the severe form of pandemic influenza poses a direct threat.

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

Generally, measuring an employee's body temperature is a medical examination. If pandemic influenza symptoms become more severe than the seasonal flu or the H1N1 virus in the spring/summer of 2009, or if pandemic influenza becomes widespread in the community as assessed by state or local health authorities or the CDC, then employers may measure employees' body temperature. However, employers should be aware that some people with influenza, including the 2009 H1N1 virus, do not have a fever.

8. 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. These would not be disability-related inquiries. If the CDC or state or local public health officials recommend that people who visit specified locations remain at home for several days until it is clear they do not have pandemic influenza symptoms, an employer may ask whether employees are returning from these locations, even if the travel was personal.⁴

9. During a pandemic, may an ADA-covered 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?

No. If pandemic influenza is like seasonal influenza or the H1N1 virus in the spring/summer of 2009, making disability-related inquiries or requiring medical examinations of employees *without* symptoms is prohibited by the ADA. However, under these conditions, employers should allow employees who experience flu-like symptoms to stay at home, which will benefit all employees including those who may be at increased risk of developing complications.

If an employee voluntarily discloses (without a disability-related inquiry) that he has a specific medical condition or disability that puts him or her at increased risk of influenza complications, the employer must keep this information confidential. The employer may ask him to describe the type of assistance he thinks will be needed (e.g. telework or leave for a medical appointment). Employers should not assume that all disabilities increase the risk of influenza complications. Many disabilities do not increase this risk (e.g. vision or mobility disabilities).

If an influenza pandemic becomes more severe or serious according to the assessment of local, state or federal public health officials, ADA-covered employers may have sufficient objective information from public health advisories to reasonably conclude that employees will face a direct threat if they contract pandemic influenza. Only in this circumstance may ADA-covered employers make disability-related inquiries or require medical examinations of asymptomatic employees to identify those at higher risk of influenza complications.

10. 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. Telework is an effective infection-control strategy that is also familiar to ADA-covered employers as a reasonable accommodation.

In addition, employees with disabilities that put them at high risk for complications of pandemic influenza may request telework as a reasonable accommodation to reduce their chances of infection during a pandemic.

11. During a pandemic, may an employer require its employees to adopt infection-control practices, such as regular hand washing, at the workplace?

Yes. Requiring infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal, does not implicate the ADA.

12. 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. An employer may require employees to wear personal protective equipment during a pandemic. However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

13. May an employer covered by the ADA and Title VII of the Civil Rights Act of 1964 compel all of its employees to take the influenza vaccine regardless of their medical conditions or their religious beliefs during a pandemic?

No. An employee may be entitled to an exemption from a mandatory vaccination requirement based on an ADA disability that prevents him from taking the influenza vaccine. This would be a reasonable accommodation barring undue hardship (significant difficulty or expense). Similarly, under Title VII of the Civil Rights Act of 1964, once an employer receives notice that an employee's sincerely held religious belief, practice, or observance prevents him from taking the influenza vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship as defined by Title VII ("more than de minimis cost" to the operation of the employer's business, which is a lower standard than under the ADA).

Generally, ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it.

14. 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. An employer's ADA responsibilities to individuals with disabilities continue during an influenza pandemic. Only when an employer can demonstrate that a

person with a disability poses a direct threat, even after reasonable accommodation, can it lawfully exclude him from employment or employment-related activities.

If an employee with a disability needs the same reasonable accommodation at a telework site that he had at the workplace, the employer should provide that accommodation, absent undue hardship. In the event of undue hardship, the employer and employee should cooperate to identify an alternative reasonable accommodation.

Example C: An accountant with low vision has a screen-reader on her office computer as a reasonable accommodation. In preparation for telework during a pandemic or other emergency event, the employer issues notebook computers to all accountants. In accordance with the ADA, the employer provides the accountant with a notebook computer that has a screen-reader installed.

All employees with disabilities whose responsibilities include management during a pandemic must receive reasonable accommodations necessitated by pandemic conditions, unless undue hardship is established.

Example D: A manager in a marketing firm has a hearing disability. A sign language interpreter facilitates her communication with other employees at the office during meetings and trainings. Before the pandemic, the employer decided to provide video phone equipment and video relay software for her at home to use for emergency business consultations. (Video relay services allow deaf and hearing impaired individuals to communicate by telephone through a sign language interpreter by placing a video relay call. During an influenza pandemic, this manager also is part of the employer's emergency response team. When she works from home during the pandemic, she uses the video relay services to participate in daily management and staff conference calls necessary to keep the firm operational.

15. 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. Asking why an individual did not report to work is not a disability-related inquiry. An employer is always entitled to know why an employee has not reported for work.

Example E: During an influenza pandemic, an employer directs a supervisor to contact an employee who has not reported to work for five business days without explanation. The supervisor asks this employee why he is absent and when he will return to work. The supervisor's inquiry is not a disability-related inquiry under the ADA.

C. AFTER A PANDEMIC

16. May an ADA-covered employer require employees who have been away from the workplace during a pandemic to provide a doctor's note certifying fitness to return to work?

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees.

As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

EEOC RESOURCES

- **Disability-Related Inquiries and Medical Examinations:**
 - *Disability-Related Inquiries & Medical Examinations of Employees Under the ADA* (2000) at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>;
 - *Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures* (2001) at <http://www.eeoc.gov/facts/evacuation.html>;
 - Enforcement Guidance: *Preemployment Disability-Related Questions & Medical Examinations* (1995) at <http://www.eeoc.gov/policy/docs/preemp.html>.
- **Reasonable Accommodation and Undue Hardship:** Enforcement Guidance: *Reasonable Accommodation and Undue Hardship under the ADA* (as revised 2002) at <http://www.eeoc.gov/policy/docs/accommodation.html>.
- **Telework as a Reasonable Accommodation:** *Work at Home/Telework as a Reasonable Accommodation* (2003) at <http://www.eeoc.gov/facts/telework.html>.



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