

Top 10: Questions Employers Are Asking In The Face Of Coronavirus

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- 1. Can we ask an employee to stay home if they are exhibiting symptoms or may have been exposed to someone diagnosed with coronavirus?** Yes. You are permitted to request an employee to seek medical attention and get tested before he/she is permitted to return to work. The EEOC has confirmed that doing so does not run afoul of federal statutes, such as the American With Disabilities Act. Employers may also take the temperature of an employee as a condition for him/her entering the workplace.
- 2. An employee of ours is presumptively positive or has tested positive for COVID-19. What should we do?** The employee should be sent home and remain home for at least 14 days. You should request the employer provide proof of medical clearance before allowing the employee to return to the office. However, that may not be practicable given the strain on the medical system. You should also ask the employee for names of individuals that he/she has had close contact with during the past 14 days. You should speak with those individuals to advise them that they may have been in contact with someone who is being tested or has tested positive. Due to confidentiality, you cannot identify the name of the infected or presumably infected employee.
- 3. Can an employee refuse to come to work?** Employees are only entitled to refuse to come to work if they have a reasonable fear that they are in imminent danger by coming to work. The employee must fear death or serious bodily injury in a short period of time. In most circumstances, employees will not be able to show imminent danger. If they cannot, an employer may terminate an employee for refusing to come to work. It is recommended that you first allow the employee to exhaust paid time off and exercise a certain degree of reasonableness.
- 4. Am I required to provide family leave?** In New Jersey, employers are required to provide up to 40 hours of leave per calendar year. Leave is accrued in increments of one hour of sick leave for every 30 hours worked. Employees can use sick leave for his or her own illness or to take care of a family member. This includes providing child care if an employee's son or daughter is home from school. On March 18, 2020, President Trump signed the Families First Coronavirus Response Act. That act requires small employers (those with fewer than 500 employees) to provide emergency paid sick leave and family leave to employees dealing with the impact of the coronavirus. See other blogs on the Einhorn Barbarito website for further details.

- 5. If an employee is diagnosed with COVID-19, what benefits are they entitled to?** The employee may be entitled to leave under state or Federal law. As set forth above, the Families First Coronavirus Response Act, effective April 2, 2020, requires employers to provide enhanced family leave and sick leave. Employees afflicted with coronavirus may be entitled to benefits under the Temporary Disability Laws. Employees that are terminated may be able to collect unemployment.
- 6. What do I do if I have an employee who cannot perform his or her job remotely?** You must look closely at state and federal law. If the employee has not been diagnosed with coronavirus and is not under quarantine, your options are more expansive. In addition, after the effective date of the Families First Coronavirus Response Act, employers will have heightened obligations for family leave and sick leave. Until that time, employers may, under certain circumstances, furlough employees, reduce their hours, or terminate their position. To provide a comprehensive answer to each particular circumstance, more information is necessary, including whether the employee is exempt or non-exempt.
- 7. What happens to the healthcare coverage of an employee during a furlough or following termination?** Any employee who loses coverage as a result of a reduction in force or reduction in the number of hours is generally entitled to COBRA coverage for 18 months. Ordinarily, that is at the expense of the employee. However, depending on whether the group health carrier permits, employers may reduce the number of hours required to remain eligible for coverage. In addition, employers may choose to pay for or subsidize the cost for COBRA coverage.
- 8. Is any notice required before laying off staff?** Generally, no. However, the Worker Adjustment and Retraining Notification Act (WARN) notice of at least 60 days is required when a business with 100 or more full-time workers is laying off at least 50 people at a single site of employment. Generally, a layoff exceeding six months or a reduction in hours by more than 50 percent during each month of any six-month period can be characterized as an employment loss, triggering WARN. There are certain exceptions when warnings are not required. The circumstances in each case may determine whether WARN notice is required. Beginning July 19, 2020, New Jersey employers must adhere to the amended WARN law, requiring 90 days notice of a layoff of 50 or more employees while also requiring one week of severance pay for each year of service.
- 9. May we require that employees use their paid time off for an absence?** Yes, if an employee is not at his or her place of employment and is not telecommuting, an employer may require that employees use paid time off. However, effective April 2, 2020, employers with fewer than 500 employees will be required to provide employees with certain paid family leave or paid sick leave. Under the new law, employers are not permitted to first require that employees exhaust paid time off.

10. Can we remain open. If so, what can we do to prevent the spread of coronavirus and limit our liability? As a result of Governor Murphy's recent Executive Order (107), most businesses in the State have been closed. Only essential businesses are permitted to remain open. To the extent a business or non-profit has employees that cannot perform their functions via telework or work-from-home arrangements. Examples of employees who need to be physically present at their work site in order to perform their duties include, but are not limited to, law enforcement officers, fire fighters, and other first responders, cashiers or store clerks, construction workers, utility workers, repair workers, warehouse workers, lab researchers, information technology maintenance workers, janitorial and custodial staff, and certain administrative staff. To the extent that you may remain open, you should employ policies and procedures to limit employee exposure and transmission. Employers should consider permitting employees to telecommute, when feasible. In addition, employers can consider reduced staffing levels, separating staff, alternating staff schedules, and various other alternatives. Businesses should ensure that the facility is cleaned regularly and require that employees engage in social distancing.