

Can we ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 coronavirus or the flu?

Yes, we are permitted to ask employees to seek medical attention and get tested for COVID-19. The CDC states that employees who exhibit symptoms of influenza-like illness at work during a pandemic should leave the workplace. Therefore, Coastal Horizons will require employees to go home if they exhibit symptoms of the COVID-19 coronavirus or the flu.

What should we do if an employee of ours has tested positive for COVID-19.

We will send home all employees who worked closely with that employee for a 14-day period of time to ensure the infection does not spread. Before the employee departs, we will ask them to identify all individuals who worked in close proximity (three to six feet) with them in the previous 14 days to ensure we have a full list of those who should be sent home. When sending our employees home, we will not identify by name the infected employee as we could risk a violation of confidentiality laws.

Can we require an employee to notify us if they have been exposed, have symptoms, and/or have tested positive for the COVID-19 coronavirus?

Yes, we will require any employee who becomes ill with COVID-19 coronavirus symptoms to notify their supervisor. Employees who are suffering from symptoms will be directed to remain at home until they are symptom-free.

While outside of work, if an employee begins experiencing symptoms, has been exposed to someone that is exhibiting symptoms, or has tested positive, the employee should contact their supervisor by telephone or email and should not report to work.

Can we open childcare centers at our locations for employees' children who are not allowed to go to school?

No. Though while well-intentioned, childcare centers and daycares require proper licensing from the state. Coastal Horizons is committed to working with any employee who has a child at home (needing supervision) due to schools being closed.

What infrastructure should we have in place for a remote work plan?

All program directors should identify the roles that are critical to the program operations and determine whether those employees can reasonably carry out their jobs while working remotely. Any trainings necessary for working remotely are being coordinated through the respective supervisor.

Does the COVID-19 coronavirus emergency trump HIPAA privacy rules?

No, the government recently sent a reminder to all employers, especially those involved in providing healthcare, that we must still comply with the protections contained in the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule during the COVID-19 coronavirus outbreak.

Are there any OSHA guidelines for handling the outbreak?

Employers have a general duty under Section 5(a) of the Occupational Safety and Health Act (“OSHA”) to furnish employees “employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.” In this context, this means that employers should implement policies and/or procedures designed to keep the workplace as safe as possible from the spread of the virus. Such policies and/or procedures might include:

- **Implementing a plan for routine cleaning and disinfection of commonly touched surfaces.** These procedures are currently in place.
- **Providing alcohol-based hand sanitizers with at least 60% alcohol in public areas like conference rooms, kitchenettes, and at the reception desk.** These procedures are currently in place.
- **Recommending/requiring frequent handwashing with soap and water for at least 20 seconds.** All staff should be following the general Centers for Disease Control and Prevention (CDC) guidelines which includes frequent handwashing.

Can employees refuse to come to work because of the threat of contracting the virus?

In most instances, no. OSHA provides that employees may only refuse to report to work if they believe they are in “imminent danger.” Section 13 of OSHA defines “imminent danger” as “any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for in [OSHA].”

If an employee does contract the virus at work, can he/she pursue a workers’ compensation claim?

In order for an employee to prevail on an “occupational disease” workers’ compensation claim resulting from the contraction of the coronavirus, the employee would have to show: (1) the virus is peculiar to the employment; (2) the job placed the employee at a greater risk of contracting the virus than the general public; and (3) the employment actually caused the employee to contract the virus. For most employees in any workplace who contract the virus, it will be difficult to satisfy these criteria.

Must employers pay employees who are not working?

For non-exempt employees, the answer is almost always “no.” This is so even if the hiatus from work is mandatory and out of their control. Depending on the employer’s policies, other

benefits, like paid vacation, sick leave or PTO may be used in order to provide pay while out of work.

The issue becomes more complicated for salaried, exempt employees. The FLSA provides that, in order for such employees to maintain the exempt tag, they need to be paid the full week's salary for any week in which they perform *any* work at all. Even in the event of a complete shutdown of operations, it is difficult to imagine any salaried, exempt employees going a full week without performing any work, especially given that most such employee will have remote access to company computer systems, email and phones.

Ultimately, many employers will need to make a judgment call. While most employees need not be paid while away from work, employers would be well-advised to consider the long-term effects on employee retention, morale and productivity. Coastal Horizons is committed to maintaining all positions through this pandemic, to every extent possible.

How Does the Family and Medical Leave Act (FMLA) apply to the coronavirus?

The rules in this regard are the same as with any other sickness. Namely, FMLA eligible employees are entitled to take up to 12 weeks of unpaid leave as a result of their own serious health condition or in order to care for a family member with a serious health condition. Does the coronavirus qualify as a "serious health condition?" The answer is "maybe." It depends on whether the symptoms the employee (or the employee's family member) experiences meet the criteria set forth in the FMLA and its regulations. Again, the rules with regard to the coronavirus are the same as they are with regard to the flu or any other illness. That said, we wouldn't be honest if we didn't admit that this situation just *feels different*. While the laws are the same, employers are probably best served by erring on the side of caution when it comes to approving FMLA leave for employees affected by the coronavirus.

Of note, we all know that most schools are cancelled, forcing many employees to choose between reporting to work or staying home to care for their children. Neither the FMLA nor any other federal or North Carolina law provides for protected leave for employees needing to stay home to care for healthy family members. This is yet another situation in which employers must make a judgment call. While no such leave need be granted, consider the real-world and long-term effects on morale, loyalty and productivity and act accordingly. Again, Coastal Horizons is committed to maintaining all positions through this pandemic, to every extent possible.

Is there any paid leave for those affected by the coronavirus?

Not yet. As noted above, established employer policies like paid sick leave, vacation or PTO might provide for employee pay for time missed due to the coronavirus, but as of the date of this publication, there is no federal or NC law mandating paid sick leave for the coronavirus or any other medical condition. That may soon change, however, at least for some.

On Saturday, March 14, 2020, the U.S. House of Representatives passed an emergency relief bill aimed at softening the economic blow of the coronavirus. Among other provisions, the legislation calls for up to three months of paid family and medical leave. As currently written, however, the paid leave provisions will not apply to very large employers (those with over 500 employees) and may not apply to smaller employers (those with less than 50 employees). Certain categories of employees, including some health care providers and emergency responders, are excluded altogether. Also, the paid leave benefits are not permanent and will expire after a year. The Senate is expected to vote on the legislation in the coming week or two.

Ultimately, it looks likely that there will be some form of paid sick leave legislation passed, but the legislation's scope remains uncertain.