

# DFEH Employment Information on COVID-19



# FAQ

**A pandemic of respiratory illness caused by a new coronavirus (COVID-19) has been identified in California and the United States. A state of emergency has been declared by Governor Newsom in California.**

Workers and employers should review their own health and safety procedures (including [Cal/OSHA workplace safety guidance](#)) to help prevent exposure to the virus and also to uphold civil rights protections to ensure discrimination does not occur in the workplace. California civil rights laws prohibit discrimination and harassment in employment, including during a pandemic.

During a pandemic, employers should rely on the latest public health recommendations from the [Centers for Disease Control and Prevention \(CDC\)](#), as well as state and local public health authorities. DFEH recognizes that public health recommendations may change during a crisis and differ between jurisdictions. Employers are expected to make their best efforts to obtain public health advice that is current and appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information.

Employers must comply with public health orders issued under the authority of a federal, state, or local entity. Such orders may place restrictions on a person's or group's activities, including movement restrictions or a requirement for monitoring by a public health authority. Federal, state, or local public health orders may be issued to enforce isolation, quarantine, or conditional release.

### ■ **The law prohibits all discrimination and harassment against employees because of race or national origin at all times.**

It is unlawful under the Fair Employment and Housing Act for an employer to discriminate against or treat an employee less favorably than another employee because of the employee's race or national origin. National origin includes geographic places of origin, ethnic groups, and tribal affiliations. For example, it is unlawful for an employer to refuse to hire, segregate, or send employees home because of their actual or perceived race or national origin, or because of their association (including marriage or co-habitation) with someone based on race or national origin. Harassment based on race or national origin is always unlawful. Employers must take reasonable steps to prevent and promptly correct discriminatory and harassing conduct in the workplace.

### ■ **May an employer send employees home if they display COVID-19 symptoms?**

Yes. The CDC states that employees who become ill with symptoms of the COVID-19 illness at work should leave the workplace. Employers may ask employees who exhibit COVID-19 symptoms to go home. Employers must provide paid sick leave and compensate the employee under paid sick leave laws. If sick leave is exhausted, employees may be entitled to other paid leave (including vacation or paid time off), or job-protected unpaid leave.

### ■ **During a pandemic, how much information may an employer request from employees who report feeling ill at work?**

Employers may ask employees if they are experiencing COVID-19 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.

### ■ **During a pandemic, may an employer take employees' temperatures to determine whether they have a fever?**

Generally, measuring an employee's body temperature is a medical examination that may only be performed under limited circumstances. However, based on current CDC and local public health information and guidance, employers may measure employees' body temperature for the limited purpose of evaluating the risk that employee's presence poses to others in the workplace as a result of the COVID-19 pandemic.

### ■ **During a pandemic, may an employer ask employees why they have 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 entitled to ask why an employee has not reported for work. If an employee discloses an illness or medically-related reason for absence, employers must maintain that information as a confidential medical record.

## ■ DFEH Employment Information on COVID-19

### ■ **What information may an employer reveal if an employee is quarantined, tests positive for COVID-19, or has come in contact with someone who has the virus?**

Employers should not identify any such employees by name in the workplace to ensure compliance with privacy laws. If an employee tests positive for or is suspected to have COVID-19, the employer will need to follow the most current local, state, or federal public health recommendations. Employers should take further steps at the direction of the local public health department that may include closing the worksite, deep cleaning, and permitting or requiring telework.

Employers may notify affected employees in a way that does not reveal the personal health-related information of an employee. For example, the employer could speak with employees or send an email or other written communication stating : “[Employer] has learned that an employee at [office location] tested positive for the COVID-19 virus. The employee received positive results of this test on [date]. This email is to notify you that you have potentially been exposed to COVID-19 and you should contact your local public health department for guidance and any possible actions to take based on individual circumstances.”

Employers may not confirm the health status of employees or communicate about employees’ health.

### ■ **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 (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

### ■ **Are employees entitled to job-protected unpaid leave under the California Family Rights Act (CFRA) if they cannot work because they are ill because of COVID-19 or must care for a family member who is ill?**

Employees may be entitled to up to 12 weeks of job-protected leave under the California Family Rights Act for their own serious health condition, or to care for a spouse, parent, or dependent child with a serious health condition.

COVID-19 will qualify as a serious health condition if it results in inpatient care or continuing treatment or supervision by a health care provider. It may also qualify as a serious health condition if it leads to conditions such as pneumonia.

Employees are eligible for this form of job-protected leave (CFRA) if they work for an employer with at least 50 employees within 75 miles of their worksite; have worked there for at least a year; and have worked at least 1250 hours in the year before they need time off.

### ■ **If an employee requests leave under the California Family Rights Act because of COVID-19, what kind of certification from a health care professional is appropriate in a pandemic?**

Generally, employees are expected to give employers notice as soon as practicable when they request CFRA leave because of their or a family members' serious health condition. Employers may require a medical certification of the serious health condition from a health care provider within 15 days of the employee's request, unless it is not practicable for the employee to do so.

In the context of a pandemic, it is not typically practicable for employees to provide advance notice of the need for leave (when that need is related to the pandemic), or for employees to obtain certifications when health care providers are working to address urgent patient needs. In a pandemic, employers must use their judgment and recommendations from public health officials to waive certification requirements when considering and granting leave requests.

### ■ **Are employees who are not eligible for CFRA leave still entitled to accommodation if they cannot come to work because of illness related to COVID-19?**

Maybe. All employers of five or more employees are required to provide reasonable accommodation to employees with disabilities unless doing so would impose an undue hardship. Telework is a familiar form of accommodation. Unpaid leave can also be a form of reasonable accommodation, even when employees are not entitled to CFRA leave. Whether illness related to COVID-19 rises to the level of a disability (as opposed to a typical seasonal illness such as the flu) is a fact-based determination.

Employers should consider telework and leave as reasonable accommodations for employees with illness related to COVID-19 unless doing so imposes an undue hardship. Factors considered when deciding whether providing leave is an undue hardship include: the number of employees, the size of the employer's budget, and the nature of the business or operation.

### ■ **What medical documentation should employees provide to support a request for reasonable accommodation to work remotely or take leave because they are disabled by COVID-19?**

Generally, when an employee requests a reasonable accommodation in the form of a change in schedule, telework, or leave, employers may request reasonable medical documentation confirming the existence of the disability and the need for reasonable accommodation.

During the current pandemic, it may be impracticable for employees to obtain medical documentation of a COVID-19-related disability from their medical provider. To the extent employers require medical documentation in order to grant reasonable accommodations, DFEH recommends waiving such requirements until such time as the employee can reasonably obtain documentation.

## ■ DFEH Employment Information on COVID-19

- **During a pandemic, must an employer continue to provide reasonable accommodations for employees with disabilities that are unrelated to the pandemic, barring undue hardship?**

Yes. An employer's responsibilities to individuals with disabilities continue during a 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 the employee from employment or employment-related activities.

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

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**If you think you have been a victim of employment discrimination, please contact DFEH.**

If you have a disability that requires a reasonable accommodation, the DFEH can assist you by scribing your intake by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or you can contact us below.

### **TO FILE A COMPLAINT**

**Department of Fair Employment and Housing**

[dfeh.ca.gov](http://dfeh.ca.gov)

Toll Free: 800.884.1684

TTY: 800.700.2320