

Employee Safety and Rights: HIPAA/ADA

HIPAA protects employees protected health information (“PHI”) from being disclosed by covered entities, unless permitted. Covered Entities generally include health care providers, health plans, and health care clearinghouses. An individual’s health status related to testing positive for COVID-19 is considered PHI.

The HIPAA privacy rule does not apply to most employers. Employer’s will likely learn that an employee has tested positive for COVID-19 from the employee or his or her family in the employer’s role as an employer, and HIPAA usually will not be implicated.

Employers with a self-insured health plan should ensure the information obtained about an affected employee is during the ordinary course of business and not as disclosed by information through the health plan.

ADA requires employers to maintain in a confidential medical file, separate from the employees personnel file, any medical information obtained through inquiry or examination.

The Americans with Disabilities Act (ADA) protects applicants and employees from disability discrimination. This would include employers keeping employee medical information confidential and not disclosing the name of any employee with a disease, unless disclosing the name is required by another Federal law or directed by the Centers for Disease Control and Prevention (CDC) or applicable public health authority.

In order to help prevent the spread of COVID-19, employers can seek information about an employee’s health that would typically be limited by the ADA.

- Employers may ask employees who call in sick if they are experiencing symptoms of the virus, including fever, chills, cough, shortness of breath, or sore throat.
- Employers may take employees’ temperatures during the COVID-19 pandemic. If the employee has a fever or other COVID-19 symptoms, the employer should keep this confidential and not disclose the employee’s identity to other employees to the extent possible.
- Employers should inform employees of any potential workplace exposure to COVID-19 to help reduce the spread of the disease and exposure in the workplace.
- Employers will require employees who are sick and/or have COVID-19 symptoms to stay home
- Employers are to advise employees who are well but who have a sick family member at home with COVID-19 to notify their supervisor and follow CDC recommended precautions.
- Employers are able to inform other employees of potential workplace exposure to COVID-19 including, for example, if an employee has tested positive for, is suspected to have, or has been exposed to COVID-19, but only to the extent necessary to adequately inform other employees of their potential workplace exposure and while complying with ADA confidentiality requirements. A good rule is to disclose what is necessary to keep employees informed and safe without revealing the identity of the infected employee.

During this COVID-19 pandemic, employers should exercise caution when dealing with or disclosing employee health information, this would include general information about potential workplace

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This policy and procedure is not intended to replace the informed judgment of individual physicians, nurses or other clinicians nor is it intended as a statement of prevailing community standards or minimum standards of practice. It is a suggested method and technique for achieving optimal health care, not a minimum standard below which residents necessarily would be placed at risk.

exposure to COVID-19. For employers to protect themselves from an employee complaint of disclosing personal health information, they should follow the CDC's Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19) and other guidance issued by government authorities. Any concerns should be discussed with legal counsel.

March 25, 2020 <https://www.jdsupra.com/legalnews/covid-19-balancing-employee-safety-and-16051/>

April 13, 2020 <https://www.natlawreview.com/article/covid-19-what-employers-need-to-know-about-hipaa>

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