

Please note: guidance may vary by industry (and within industry, e.g. SNF vs. ambulatory care) and is rapidly changing so must be reviewed specifically and regularly.

Federal, Baseline Consideration Examples

1. EEOC Guidance on Screening for Return-to-Work

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (as of May 30, 2020)

- a. *So long as the CDC considers COVID-19 to be a pandemic*, employers may ask employees if they are experiencing symptoms of the virus. Symptoms are those recognized by the CDC, other public health authorities and reputable medical sources. Symptoms currently include fever, chills, cough, shortness of breath, sore throat, new loss of smell or taste, and gastrointestinal problems, such as nausea, diarrhea, and vomiting.
- b. During this time, employers may also measure employees' body temperature.
- c. Employers must maintain this information as a confidential medical record in compliance with the ADA.
- d. Employers are permitted to require a physician's certification that employees are fit for duty.
- e. While testing for the COVID-19 virus is permitted by the EEOC guidance, the test must be accurate and reliable. The EEOC recommends review of FDA and CDC guidance about what constitutes safe and accurate testing, and recommends that employers consider the incidence of false-positives or false-negatives associated with a particular test. We recommend consultation with legal counsel to the extent testing is being considered.

2. CDC Recommendations for Returning Workers, Generally

<https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

- a. Temperature screening is optional. If done, several methods suggested to protect the employee conducting the temperature screening:
 - **Reliance on Social Distancing:** Ask employees to take their own temperature either before coming to the workplace or upon arrival at the workplace. Upon their arrival, stand at least 6 feet away from the employee and:
 - Ask the employee to confirm that their temperature is less than 100.4° F (38.0° C), and confirm that they are not experiencing coughing or shortness of breath.
 - Make a visual inspection of the employee for signs of illness, which could include flushed cheeks or fatigue.
 - Screening staff do not need to wear personal protective equipment (PPE) if they can maintain a distance of 6 feet.
 - **Reliance on Barrier/Partition Controls:** During screening, the screener stands behind a physical barrier, such as a glass or plastic window or partition, that can protect the screener's face and mucous membranes from respiratory droplets that may be produced when the employee sneezes, coughs, or talks. Upon arrival, the screener should wash hands with soap and water for at least 20 seconds or, if soap and water are not available, use hand sanitizer with at least 60% alcohol. Then:
 - **Reliance on Personal Protective Equipment (PPE):** Upon arrival, the screener should wash their hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60% alcohol, put on a facemask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), and a single pair of disposable gloves. A gown could be considered if extensive contact with an employee is anticipated. Then:
 - Make a visual inspection of the employee for signs of illness, which could include flushed cheeks or fatigue, and confirm that the employee is not experiencing coughing or shortness of breath.
 - Take the employee's temperature.
- b. CDC has not commented on screening questionnaires for all industries.

3. CDC Recommendations for Returning Healthcare Workers with Confirmed or Suspected Cases of COVID-19

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html> (as of May 30, 2020)

- a. **Those who are symptomatic with suspected or confirmed COVID-19** (Either strategy is acceptable depending on local circumstances):
 - *Symptom-based strategy.* Exclude from work until:
 - At least 3 days (72 hours) have passed *since recovery* defined as resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g., cough, shortness of breath); **and**,
 - At least 10 days have passed *since symptoms first appeared*
 - *Test-based strategy.* Exclude from work until:
 - Resolution of fever without the use of fever-reducing medications **and**
 - Improvement in respiratory symptoms (e.g., cough, shortness of breath), **and**
 - Negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected ≥24 hours apart (total of two negative specimens)[1]. See [Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens for 2019 Novel Coronavirus \(2019-nCoV\)](#). Of note, there have been reports of prolonged detection of RNA without direct correlation to viral culture.

b. **Those with laboratory-confirmed COVID-19 who have not had any symptoms** (Either strategy is acceptable depending on local circumstances):

- *Time-based strategy.* Exclude from work until:
 - 10 days have passed since the date of their first positive COVID-19 diagnostic test assuming they have not subsequently developed symptoms since their positive test. If they develop symptoms, then the *symptom-based* or *test-based strategy* should be used. Note, because symptoms cannot be used to gauge where these individuals are in the course of their illness, it is possible that the duration of viral shedding could be longer or shorter than 10 days after their first positive test.
- *Test-based strategy.* Exclude from work until:
 - Negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected ≥ 24 hours apart (total of two negative specimens). Note, because of the absence of symptoms, it is not possible to gauge where these individual are in the course of their illness. There have been reports of prolonged detection of RNA without direct correlation to viral culture.

c. Consider consulting with local infectious disease experts when making return to work decisions for individuals who might remain infectious longer than 10 days (e.g., severely immunocompromised).

4. **CDC Recommendations for Returning Vulnerable Workers**

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (May 30, 2020)

a. Per the CDC, vulnerable workers include:

- Employees 65 years and older
- Employees of all ages with underlying medical conditions, particularly if not well controlled, including:
 - Chronic lung disease or moderate to severe asthma
 - Serious heart conditions
 - Immunocompromised
 - Severe obesity (body mass index [BMI] of 40 or higher)
 - Diabetes
 - Chronic kidney disease undergoing dialysis
- Liver disease
- No alternative screening processes are suggested for vulnerable workers. CDC recommends that, “[b]y using strategies that help prevent the spread of COVID-19 in the workplace, you will help protect all employees, including those at higher risk. These strategies include:
 - Implementing telework and other social distancing practices
 - Actively encouraging employees to stay home when sick
 - Promoting handwashing
 - Providing supplies and appropriate personal protective equipment (PPE) for cleaning and disinfecting workspaces.”

Other Federal guidance may also be applicable, e.g. CMS, OSHA, FDA, etc.

State Jurisdiction	County	City	Temperature Check (Required, Recommended, or Silent)	Temperature, if applicable (at or above)	Symptoms Screening/ Questionnaire (Required, Recommended, or Silent); if Required or Recommended, Expected Contents	If Symptoms Questionnaire Required or Recommended, How Often?	Other Return-to-Work Requirements or Recommendations	Order Expiration Date	Citation and link
State ABC			Executive Orders will sometimes set a temperature screening threshold	Sometimes varies with industry (e.g.	CDC symptoms are often referenced, but Executive Orders may be different than CDC,	Daily	May require that all facilities implement	June 30, 2020	LINK

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			different from the CDC recommendation of 100.4 – temperature screening may be recommended or required, varies with jurisdiction	SNF vs. ambulatory clinic vs. retail)	or impose screening in addition to CDC symptoms, e.g. <ul style="list-style-type: none"> • Have you been in close contact with a confirmed case of COVID-19? • Are you experiencing a cough, shortness of breath or sore throat? • Have you had a fever in the last 48 hours? • Have you experienced new loss of taste or smell? • Have you experienced vomiting or diarrhea in the last 24 hours? 		individual control measures as well as train employees how to screen themselves for symptoms; may require written return-to-work plan following CDC/other guidance; may require testing for certain industries; may prohibit testing as a condition of returning to work	(as a practical matter, needs to be re-evaluated should WHO/CDC no longer consider COVID a pandemic	Last updated 5/2020, last accessed 5/22/20
	County A								
		City A1							
		City A2							
	County B								
		City B1							