

Basic Coronavirus (COVID-19) FAQs

Q: What precautions does the federal or state government recommend to lower the risk of COVID-19 exposure?

A: Current Center for Disease Control (CDC) guidelines for those who are concerned about exposure or symptoms for COVID-19 are accessible online at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>. The Texas Department of State Health Services has some useful resources on its website at <https://dshs.texas.gov/coronavirus/>. Employers may also call the city or county health authorities in their places of operation for further assistance.

Q: What does the CDC recommend regarding quarantines?

A: The CDC guidelines do not currently include involuntary quarantining for those who have been exposed to a higher-than-normal risk of coronavirus. However, voluntary self-quarantining is mentioned as one way that employees who feel the onset of symptoms can assist in minimizing the risk of spreading disease. Naturally, good judgment and common sense go a long way, and employees who voluntarily self-quarantine should be treated the same way that any other employee would be treated who reports absences due to medical conditions, i.e., apply the company's normal medical absence policy.

Q: Has the Texas Workforce Commission (TWC) waived the one-week waiting period for unemployment insurance (UI) Benefits?

A: Yes, Governor Abbott granted the Texas Workforce Commission's request to suspend the one-week waiting period. Workers in Texas will be able to receive benefits immediately after their unemployment benefit applications are approved.

Q: Is an employer allowed to send an employee home if they are showing signs of illness, such as coughing, sneezing, or report that they have aches or chills?

A: Yes, in keeping with an employer's general duty under OSHA to maintain a safe and healthy workplace for employees, employees who appear to be sick may be asked to go home, but do so as politely and discreetly as possible. However, the employer should be consistent and treat all employees who exhibit risky symptoms the same.

Q: Do we need to worry about medical privacy laws?

A: Medical information enjoys the highest degree of privacy protection. Other employees do not have the right to gossip about others if the gossip violates their right to be free of a hostile work environment or invasion of privacy. Legitimate concerns about health issues of employees should be discussed with appropriate supervisors, not with others who have no authority to do anything about it. In general, see https://twc.texas.gov/news/efte/medical_information_confidentiality_policy.html.

Q: What if we know that an employee has been exposed to COVID-19, but they are showing no symptoms?

A: Generally, there is no Texas or federal law that would prohibit a company from telling employees to stay home if they have had a higher-than-normal degree of exposure to individuals actually infected with the disease. As noted above, be consistent and do not base self-isolation orders on factors such as race or national origin. There have been scattered reports of ethnic discrimination, particularly against people who look like they might have come from Asia. The Equal Employment Opportunity Commission (EEOC) is already warning employers that singling employees out based on ethnic or national origin concerns could trigger a discrimination charge.

Q: Would the employer have to pay sick leave to that employee?

A: Yes, if the company offers such paid leave. Paid leave policies should be followed - failure to pay for leave owed under a written paid leave policy is a violation of the Texas Payday Law.

Q: Could they file unemployment claims and draw unemployment benefits if they are told to go home for medical reasons?

A: No, if they are receiving paid leave benefits. While on paid medical leave, they would not be considered "unemployed" under TWC laws and would not be able to claim unemployment insurance (UI) benefits.

Q: What if they are not getting paid leave?

A: If they are on unpaid leave, they could be considered unemployed if they are out long enough to satisfy the test for either partial or total unemployment (for those definitions, see our book Especially for Texas Employers online at https://twc.texas.gov/news/efte/ui_law_eligibility_issues.html#defin_of_unemployment).

Q: Does an employee get unemployment benefits even if they are too sick to work?

A: Any claimant who is able to file a claim for UI benefits must meet the eligibility requirements in order to actually draw benefits. Most notably, the claimant must be medically able to work and be available and actively searching for full-time work. Employees on temporary layoff status may be excused from work search requirements if they have a definite return-to-work date less than eight to twelve weeks in the future.

Q: Is there any way an employer can avoid the cost of unemployment benefits?

A: An employer may be eligible for protection from chargebacks from UI benefits if the evidence shows that the work separation was for medical reasons. However, if the reason for the work separation was merely a cautionary period of time off to minimize potential exposure of others to someone who might be infected, but might not be, chargeback protection would most likely not be extended to the employer. To minimize the chance of unemployment claims being filed, the employer can encourage employees to work from home if the job is such that remote work is possible. Proper recording of work time is necessary, and the employer would need to work with the employees to set up a timekeeping system that works properly and takes all time worked into account.

Q: I am concerned that my small shop might be ordered to close its doors to control the pandemic.

Would I have to pay for unemployment benefits for my employees?

A: If a business shuts down due to a closure order from a governmental entity, Section 204.022(a)(1-2) (see <https://statutes.capitol.texas.gov/Docs/LA/htm/LA.204.htm#204.022>) of the Texas Labor Code may allow an employer to ask for chargeback protection. If that were to happen, you should include a copy of the shutdown order with your response to the unemployment claim and argue that the closure was mandated by a local or state order.

Q: Can TWC assist us if the pandemic forces a mass layoff?

A: Yes – TWC’s Rapid Response Unit can help employers and affected employees access unemployment claim and reemployment services in a very streamlined and efficient manner. For information, see the TWC website at <https://twc.texas.gov/businesses/rapid-response>.

Q: What other alternatives exist to avoid mass layoffs?

A: TWC administers the Shared Work Program, which allows partial unemployment benefits for similarly-situated employees whose hours are reduced by a standard amount between 10 and 40 percent – information about that program is <https://twc.texas.gov/businesses/shared-work>.

Q: What other information is on the TWC website about workplace illness issues?

A: The following topics in our book Texas Guidebook for Employers may be useful:

https://twc.texas.gov/news/efte/medical_leave_laws.html and

<https://twc.texas.gov/news/efte/fmla.html>.

Q: What can an employer ask for if an employee tells us she is ready to return to work?

A: A question that might come up is whether it is permissible for an employer to require a doctor's release / fitness for duty certificate or something similar if an employee is returning from an absence caused by something that looks or acts like COVID-19. It would be good to keep in mind that many employees may have financial problems relating to inability to pay to see a doctor, so they should take that into account, and also that at least under current conditions, medical documentation should be requested only if a person is known to have been exposed to a communicable disease (not just coronavirus, but also things that are just as infectious, such as colds, flu, and other viral pests). Moreover, medical offices are almost overwhelmed, so issuing documentation will not be high on their priority lists, and tests for COVID-19 are not yet widely available. Finally, requests for medical documentation should be done consistently and fairly for all similarly-situated employees.

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Texas Workforce Commission