NATIONAL SAFETY COUNCIL

Position/Policy Statement

COVID-19 Testing

As of June 8, 2020, the following information is the most up-to-date for Severe Acute Respiratory Syndrome coronavirus 2 (SARS-CoV-2). Given this, the National Safety Council (NSC) has developed policy positions reflecting the most recent data and information. These may change over time as more information is learned.

POSITION/POLICY:

The National Safety Council (NSC) supports the use of COVID-19 testing mechanisms by businesses to help ensure worker safety and health and stop the spread of the coronavirus. This includes:

1. Symptom screening, and temperature screenings
2. Participation in testing
3. Sharing positive coronavirus test results with public health authorities
4. Maintaining "direct threat" status

JUSTIFICATION:

SARS-CoV-2

Late in 2019, a novel coronavirus was first identified in Wuhan, China. It is called "novel" because it is a new coronavirus for humans. It is abbreviated as SARS-CoV-2 and causes the disease COVID-19 (CO=corona VI=virus D=disease and 19 refers to the year it was identified).[1] On March 11, 2020, COVID-19 was declared a pandemic.[2]

The virus is largely spread through respiratory droplets from an infected person through a sneeze or cough. Droplets can initiate infection after depositing on an uninfected person's eyes, mouth or nose, and is especially spread when people are in close contact with each other—

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[1] https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics
[2] https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act

within 6 feet.[3] About 80% of infected people are asymptomatic or have mild symptoms and can still spread SARS-CoV-2.[4]

Symptoms of COVID-19, which may appear 2-14 days after exposure, may include:

- Cough
- Shortness of breath or difficulty breathing
- Fever
- Chills
- Muscle or body aches
- Sore throat
- Headache
- Fatigue
- Congestion or runny nose
- New loss of taste or smell
- Intestinal symptoms of nausea, vomiting, diarrhea[5]

To avoid infection, the Centers for Disease Control and Prevention (CDC) recommends that people wash their hands often for at least 20 seconds with soap and water or use hand sanitizer with at least 60% alcohol. Also, avoid touching their mouth, eyes and nose. People should also avoid close contact (less than 6 feet) with each other and not gather in groups.[6]

Some people may be at a higher risk for coronavirus. This includes people who are 65 years of age or older and those of any age with underlying health conditions. These health conditions can include:[7]

- Chronic lung disease or moderate to severe asthma
- Serious heart conditions
- Immunocompromised
- Severe obesity
- Diabetes
- Chronic kidney disease undergoing dialysis
- Liver disease[8]
- Hemoglobin diseases

To further prevent virus spread, the CDC recommends that people wear cloth facial coverings when going out in public.[9] These coverings help stop the spread of respiratory droplets from traveling to and infecting other people. Other CDC recommendations include

- Cover all coughs and sneezes

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[3] https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics
[4] https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200306-sitrep-46-covid-19.pdf?sfvrsn=96b04adf_4#:~:text=For%20COVID%2D19%2C,infections%2C%20requiring%20ventilation
[5] https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html
[6] Ibid.
[7] https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html
[8] Ibid.
[9] https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html

- Throw away the tissue
- Wash hands immediately after a cough or sneeze
- Avoid being in public when sick
- Clean and disinfect surfaces regularly, especially high touch areas like door knobs and light switches.[10] [Here](#) is a list of household disinfectants from the EPA.[11]

People who have COVID-19 pose a direct threat to the health of others, including in workplaces.[12] On March 11, the World Health Organization declared COVID-19 a pandemic, defined as the global spread of a new disease. The United States leads the world in the number of confirmed cases at 1,842,101 and 107,029 deaths as of June 4, 2020.[13] More state-by-state data can be found on the CDC website [here](#).[14]

Ensuring Safe Workplaces during the Coronavirus Pandemic

Places of employment, especially where employees are in close contact with each other and/or the public, are susceptible to SARS-CoV-2 outbreaks. NSC urges businesses to take precautions and institute new operating measures to protect the safety and health of their workforce and the public. These measures should follow the latest government guidance coming out of the CDC, OSHA, and relevant state agencies, but also can be stricter based on risk level posed by the nature of the workplace environment. Some of these recommendations may create questions for businesses regarding how to maintain safe workplaces while remaining in compliance with existing laws. Therefore, the National Safety Council believes the following measures will promote occupational safety and health and encourages applying these measures to everyone interacting with and in a business facility, including visitors.

The American with Disabilities Act (ADA) became law in 1990, and it prohibits discrimination against people with disabilities in transportation, public accommodations, communications, employment and access to government programs and services.[15] The U.S. Equal Employment Opportunity Commission (EEOC) enforces ADA when it comes to many of the employment provisions.[16]

The EEOC states, "the ADA and Rehabilitation Act rules continue to apply, but they do not interfere with or prevent employers from following the [guidelines and suggestions made by the CDC](#) about steps employers should take regarding the Coronavirus." Another EEOC website expands this to other public health guidance too, **"The ADA and the Rehabilitation Act do not interfere with employers following advice from the CDC and other public health authorities on appropriate steps to take relating to the workplace."[17]**

NSC supports screening all individuals entering workplaces and testing whenever appropriate, including those at risk for infection who are asymptomatic. **NSC also believes guidance during the time of a pandemic should be more explicit and clear to include the following measures:**

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[10] https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html
[11] https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2
[12] https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws
[13] https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html
[14] Ibid.
[15] https://www.dol.gov/general/topic/disability/ada
[16] Ibid.
[17] https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act

- **Symptoms, including temperature, screenings.** Screening an employee's symptoms, including whether they have a fever, should be permitted during the pandemic, and the EEOC should continue to allow this screening tool.[18] These screenings should be conducted daily, where feasible. While this is not a perfect solution because of the percentage of people who are asymptomatic, it is a helpful tool in determining if a person should not be at work.[19] Guidance from the EEOC and HHS should be clear that temperature screening and symptom screening by a third-party provider retained by the employer, even if the third-party is a medical provider, medical professional, or medical clinic, is not medical treatment and is not information protected by the Health Insurance Portability and Accountability Act (HIPAA).

  The U.S. Chamber has produced a sample screening questionnaire, available here.[20] Online tools may also be helpful for screenings. A recent study in "Nature Medicine" found that a self-reporting symptom application (app, COVID Symptom Study[21]) was 80% successful in predicting who has COVID.[22] The loss of taste and smell was the top predictor of illness (reported by 65% of those with positive tests for viral infection and 21.7% of those with negative test results).

  If employers choose to perform on-site temperature screenings, they should be aware of the imitations, cautions and requirements of these screenings. Temperature screening has not been shown to significantly impact the spread of COVID-19 based on current science. If it is used it should be part of a larger education and pre- work screening effort which could include symptom screening and reminders of the importance of physical distancing, good hand hygiene and general hygiene practices, and use of facial coverings. Employers should pay careful attention to follow-up steps for those who are instructed not to proceed to work, as well as attention to all the concerns described above.

  Recommended Actions for Employers Regarding Symptom Screening:

  1. Employers should adopt policies and practices that encourage employees and others who may be included in screening (such as onsite suppliers, visitors, etc.) to provide complete and accurate answers to questions concerning symptoms and potential COVID-19 exposures.
  2. Employers should be flexible with leave policies to ensure employees feel comfortable proactively sharing their symptoms with employers and making decisions not to come to work when they feel sick or are exhibiting symptoms.
  3. Employers should appropriately maintain medical information subject to ADA confidentiality requirements.[23] Documentation of this information would represent a

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[18] Ibid.

[19] A recent study found that 31% of infected people had an elevated temperature, https://www.uptodate.com/contents/coronavirus-disease-2019-covid-19-epidemiology-virology-clinical-features-diagnosis-and-prevention

[20] https://www.uschamber.com/sites/default/files/coronavirus_employeequestionnaire_final.pdf

[21] https://covid.joinzoe.com/us

[22] https://www.google.com/url?q=https://www.nature.com/articles/s41591-020-0916-2&sa=D&ust=1589484095846000&usg=AFQjCNG1WNUIZxO4uVdm7lE724XHcRfesA

[23] https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act

medical record and could also be subject to OSHA record keeping requirements (employment plus 30 years). To ensure that screening data is not treated as medical information, employers should consider not keeping individually identifiable screening data.

4. Employers should establish a safe and secure area for employees who may have an elevated temperature and ensure that temperature screeners have appropriate PPE. In addition, employers should have plans for how to transport people home or to appropriate medical care, as needed.

5. Workplaces conducting symptom screenings can help identify areas of potential outbreaks. Businesses should share appropriate information from these screenings with public health officials.

6. Employers should establish procedures for employees who refuse to have a temperature or other screening conducted.

Recommended Actions for the Federal Government Regarding Symptom Screening:

1. The EEOC should continue to allow employee symptom screening during the pandemic.

2. The EEOC and HHS should allow that COVID-19 screening data obtained during the pandemic is not medical treatment and not covered by HIPAA.

- **Sharing positive coronavirus tests.** HIPAA protects most health information from being shared publicly, including with employers. The U.S. Department of Health and Human Services (HHS) has issued guidance during the pandemic to allow sharing of a positive COVID-19 test to law enforcement, paramedics, other first responders, and public health entities.[24] This guidance should be clearly extended to include employers as outlined by the EEOC, for sharing of test results for current SARS-CoV-2 infection that constitute a potential direct threat, but not for sharing of serology (blood test) results since the meaning of antibody results is still unclear. Already, the EEOC allows temporary staffing agencies or contractors to share a positive COVID-19 diagnosis with the employer for whom the temporary/contractor is working.[25] Employers are responsible for providing safe workplaces to their employees, including properly cleaning and sanitizing workplaces, and giving them access to positive COVID-19 test results will allow them to assist public health officials with contact tracing and containment.

  Employers may contract with third-parties to conduct testing. When the third-party is a medical provider, medical professional, or medical institute, that third party should be allowed to share positive test results immediately with the employer or at least to share fitness for duty, work restrictions, and the need for contact tracing or other preventive measures even if that allows the employer to surmise that the employee has COVID-19. If the third-party provider is not free to share the test results or the practical implications of test results in real time and the employer must rely on the employee to provide the test results, co-workers and visitors might be put at risk and valuable time conducting contact tracing, cleaning the work place, and making further decisions regarding employee safety is lost. There is also a concern that an employee may not share positive COVID-19 test results with an employer.

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[24] https://www.hhs.gov/sites/default/files/covid-19-hipaa-and-first-responders-508.pdf
[25] https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws

Recommended Actions for the Federal Government Regarding Symptom Screening:

1. HHS and EEOC should allow for sharing positive COVID-19 test results or recommendations of fitness for duty, work restrictions, contact tracing, and other preventive measures based on test results with employers and continue to include contractors and temporary workers during the pandemic.

- **Participation in testing.** The Food and Drug Administration (FDA) states, "to respond effectively to the COVID 19 outbreak, rapid detection of cases and contacts, appropriate clinical management and infection control, and implementation of community mitigation efforts are critical."[26] As community members, employers should encourage robust participation in testing programs among employees, which may include community or workplace based testing.

   To enable more testing, community based testing sites have been established at pharmacies, retailers and other locations. During the national emergency declaration, the HHS Office of Civil Rights has announced enforcement discretion in order to share testing results with public health agencies.[27] NSC supports this discretion, and encourages a thorough evaluation before removing it as it relates to COVID-19. Workplaces should encourage employees to make use of community testing sites to help with community recognition of infection rates.

   The EEOC has provided guidance allowing for employee symptom screening and testing consistent with it being a business necessity.[28] Employers should ensure that contractors and temporary workers on site participate in testing regimens which are at least as stringent as corporate testing program where they are working. A decision to test employees creates an obligation to refer positive employees for treatment, or provide treatment directly through company or contract services. Health department reporting requirements must also be followed. Test results must be interpreted by qualified medical personnel, preferably occupational physicians, or others with experience in managing population health.

   For organizations that may conduct COVID-19 testing on their own or through a third party provider, the ability to validate testing equipment is necessary and a priority. The FDA has stated that labs certified under its Clinical Laboratory Improvement Amendments (CLIA) will be allowed to perform COVID-19 testing before receiving its emergency use authorization (EUA) from the FDA, and that these labs should submit EUA approval within 15 days of validating the test. Businesses contracting with testing organizations should ask for the FDA validation and check it on the FDA website too.[29]

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[26] https://www.google.com/url?q=https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations%23coronavirus2019&sa=D&ust=1589484095845000&usg=AFQjCNF1gZZduRenKB8jvSrPINbdJ1evzg
[27] https://www.hhs.gov/about/news/2020/04/09/ocr-announces-notification-enforcement-discretion-community-based-testing-sites-during-covid-19.html
[28] https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act
[29] https://www.google.com/url?q=https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations%23coronavirus2019&sa=D&ust=1589484095845000&usg=AFQjCNF1gZZduRenKB8jvSrPINbdJ1evzg

Recommended Actions for Employers Regarding COVID-19 Testing:

1. Employers and their medical providers should appropriately maintain medical information subject to ADA confidentiality requirements.[30] Documentation of this information would represent a medical record and could also be subject to OSHA record keeping requirements (employment plus 30 years).
2. Employers should establish a safe and secure area for employees who may have a positive COVID test and ensure that test providers have appropriate PPE. In addition, employers should have plans for how to transport people to appropriate medical care, as needed.
3. Workplaces conducting COVID testing can help identify areas of potential outbreaks. Businesses and their medical providers should also share these results with public health officials.

Recommended Actions for the Federal Government Regarding COVID-19 Testing:

1. The EEOC should continue to allow employee contractor and temporary worker COVID-19 testing during the pandemic.
2. The FDA must continue to validate testing mechanisms on an expedited basis and make this information available as soon as possible.
3. Support the availability of testing kits to CLIA-certified laboratories providing services to employers.

- **Maintaining "direct threat" status.** During the pandemic, COVID-19 does present a direct threat to the health and safety of workplaces,[31] and the EEOC should acknowledge this for the duration of the pandemic declaration. This means employers can prevent an employee with a clear medical diagnosis of COVID-19 from coming to work until they are no longer contagious to others, as outlined in recently released guidance from the EEOC. This action of preventing such an employee from coming to the workplace is not inconsistent with ADA compliance.[32]

Recommended Actions for the Federal Government Regarding "direct threat" status:

1. The EEOC should maintain the "direct threat" status that allows employers to keep employees with a clear medical diagnosis of COVID-19 from coming to a workplace until they are no longer contagious.

NSC also recommends the employers develop pandemic response plans. NSC is producing information to help with this through its SAFER (Safe Actions for Employee Returns) initiative at www.nsc.org/safer.

This position statement reflects the opinions of the National Safety Council but not necessarily those of each member organization.

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[30] https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act
[31] https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act
[32] Ibid.

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