

Influenza Pandemic Preparedness and the ADA Part 2, What This Means For Counties

Counties may require employees to use all CDC approved infection control strategies at work, such as frequent hand washing, following cough/sneeze or tissue etiquette, wearing personal protective equipment such as masks, using anti-bacterial agents, observing greater person to person distance to avoid spray or cough contamination, tele-commute, and the like. In fact, these may well be considered “reasonable accommodations” required prior to sending a person with an actual disability home.

Counties may ask employees who voluntarily report having influenza-like symptoms to go home on paid leave or to get a medical clearance. Be wary of requiring them to take leave or requiring them to go home if they do not have leave.

If the symptoms are shown by the employee to be part of a disability, the employer must “reasonably accommodate” the disability. Employers should not assume that all disabilities increase the risk of influenza complications, or that flu symptoms will show up equally in employees.

Counties may ask employees who report being sick if they are “experiencing flu-like symptoms” or when they expect to return to work, as the flu may keep a person out for up to a week or more if pneumonia sets in. However, it isn’t recommended that this be done routinely by direct supervisors, since these questions can easily be “likely to elicit disability related information.”

A county can require employees who have been away from the workplace during a pandemic to provide a doctor’s note certifying fitness to return to work. If health care professionals are too busy, it could rely on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus or that the fever is below 100 degrees.

County management should not take an employee’s temperature or conduct any other medical exams at work. Instead the employee should be given a choice to go to the doctor or the public health department for a fitness for duty certification or to go home until their (measured) temperature is below 100 degrees.

Counties may not compel all of their employees to take the influenza vaccine regardless of their medical conditions or their religious beliefs during a pandemic. Employers should encourage employees to get the influenza vaccine rather than requiring them to take it.

Counties should not ask employees “do you have underlying medical conditions that make you susceptible to the flu or pneumonia?” or other questions “likely to elicit information about a disability” as those violate the ADA.

A county may NOT lawfully exclude a person from work unless they can show that the person can’t perform essential duties or is a direct risk, and that the situation cannot be reasonably accommodated without a substantial hardship. A normal flu season would not be a substantial hardship; a “direct threat” that can’t be otherwise accommodated through normal infection control methods might be.

For more details on the EEOC’s guidance, see the full article at: www.eeoc.gov/facts/pandemic_flu.html

Note: All information about applicants or employees obtained through disability-related inquiries or medical examinations, or regarding the medical condition or history of an employee must be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record.