

Coronavirus / COVID-19 - Re-Opening Issues (as of June 10, 2020)

<p>1. Can Employer require employees to wear a mask as a condition of employment?</p>	<p>Yes, but while in many circumstances (like interaction with the public) a blanket rule is appropriate, demand to bargain, such as permitting removal when doing physical labor, such as order selecting, if there's social distancing. Rules requiring masks in common areas, break rooms, locker rooms, during pre-shift meetings, and at customer locations or when making deliveries are going to be upheld (and Union opposition = "Union wants sick members").</p>
<p>2. Does a requirement that employees wear a mask violate employee's constitutional rights?</p>	<p>No. Private companies have the right to establish rules for employees and customers, and requiring the wearing of masks is within those rights. Members have a constitutional right to quit if they don't want to wear a mask.</p>
<p>3. Can employees be disciplined for refusing to wear a mask?</p>	<p>Yes. Because the CDC has recommended the use of masks or face coverings, and because they are required by many counties' orders, arbitrators would uphold discipline for employees who refuse (absent extraordinary circumstances).</p>
<p>4. Can an employee refuse to work if the Employer does not provide a mask, does not require employees and customers to wear masks, does not provide adequate PPE, or enforce physical distancing protocols?</p>	<p>Refusal to work is insubordination and should be used as a last resort only if the employee considers the conditions life threatening (perhaps a pre-existing vulnerability?). Best addressed by obeying order and grieving.</p>
<p>5. What options does an employee have who is either over 65 or medically vulnerable if they do not wish to return to work?</p>	<p>In Oakland, San Francisco and San Jose local ordinances allow paid time off. Elsewhere, if a doctor who will certify that they have a serious health condition and need to take a leave of absence, they will have up to three months of <i>unpaid</i> FMLA Leave (if eligible) and will likely qualify for state disability (approx. 2/3 pay). Members out of FMLA leave but who have a disability that makes them more susceptible to Covid-19 can ask for a leave of absence as an ADA accommodation. If the employee cannot get a doctor's note? Attempt to negotiate a personal leave of absence.</p>

<p>6. What option does an employee have who has a medically vulnerable family member at their home and do not want to return?</p>	<p>See answer to 5 above.</p>
<p>7. What are employees' options if their child's school or daycare is still closed and they have no other options for childcare?</p>	<p>If the employer has fewer than 500 employees, the employee will be able to take expanded FMLA leave and be paid at 2/3 of their pay, maximum of \$200 per day, for up to ten weeks. [See above — Oakland, San Francisco, San Jose also expanded these rights for employers with more than 500 employees] If not, seek a personal leave and the employee will likely be eligible for unemployment.</p>
<p>8. Can employees provide their own Personal Protective Equipment, such as gloves and masks?</p>	<p>It depends. If they want to use their own mask or gloves, they should be allowed to as long as they meet the minimum safety requirements and the masks are not offensive. However, employers may also refuse to allow employees to wear certain enhanced PPE, such as face shields, if they believe it will create a safety hazard or if it wants to impose uniform PPE (and supplies adequate PPE).</p>
<p>9. Can an employer take temperatures of all employees prior to the start of their shift and/or require them to answer daily questions related to their recent health?</p>	<p>Yes, many employers have already implemented such a process, and some counties require it. The CDC has recommended it and the EEOC has stated that it does not violate the law. However, demand bargaining regarding any policy related to temperature checks or daily questionnaires to (1) ensure that the questions are not unnecessarily invasive, (2) the temperature checks are implemented in a safe manner with proper use of PPE and physical distancing, and (3) employees are paid for any time that they have to wait in line for the screening or filling out questionnaires.</p>
<p>10. Can employers require employees to take their own temperature prior to going to work?</p>	<p>If it provides employees with a thermometer and pays them for that time.</p>
<p>11. Can employees be disciplined for refusing to have their temperature checked or answer the daily questions?</p>	<p>Yes, refusal to abide by a reasonable work is insubordination.</p>

12. Can an employer require an employee to text or electronically send answers to a daily health questionnaire as a condition of employment (requiring employees to have a smartphone)?	If it provides an alternative method for employees who do not have a smartphone or do not want to send it electronically.
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