# MIDDLETON REUTLINGER®
## ATTORNEYS

# Frequently Asked COVID-19 Questions for Employers
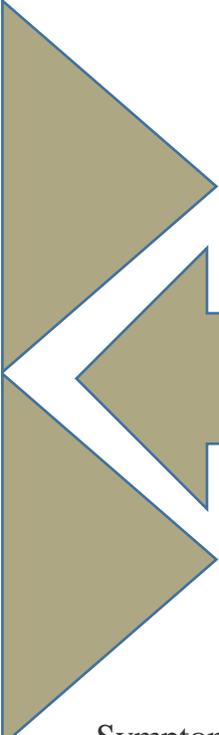
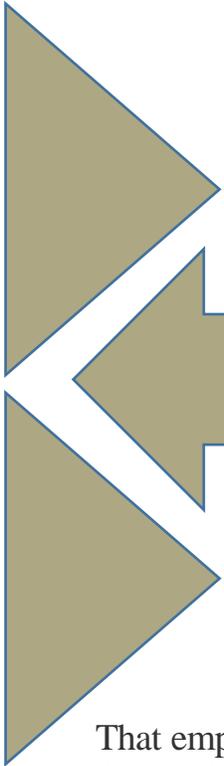# What do I do if an employee seems sick?

Symptoms of COVID-19 are fever, chills, cough, shortness of breath, or sore throat. You are allowed to ask an employee if they are experiencing any of those symptoms, and ask them to seek medical treatment if they are. Additionally, you are allowed to ask to the employee to leave the workplace if they are exhibiting any COVID-19 symptoms.

According to the CDC, employees exhibiting symptoms of influenza-like illness at work during a pandemic **should** leave the workplace. Additionally, the Equal Employment Opportunity Commission (EEOC) recently confirmed that employers are permitted to tell employees to go home and doing so would not be considered disability-related if the symptoms present are those expected for COVID-19 or the flu.

The EEOC bulletin confirms that employers are not in violation of the ADA or the Rehabilitation Act if they do the following:

- Inquire if employees are experiencing symptoms of COVID-19 and maintain that information as a confidential medical record;
- Measure employee body temperature;
- Instruct employees with COVID-19 or symptoms of COVID-19 to stay home or to go home;
- Require physician documentation that the employee is able to return to work before permitting employees to return;

While these steps are permitted by the federal government, some states impose additional requirements such as consent forms and privacy requirements. If you have any questions, please contact Middleton Reutlinger.

## What do I do if an employee tests positive?

That employee should be asked to not return to work until he has been cleared by a physician. Ask the employee to identify all individuals he worked with in the past 14 days. Those individuals should also be asked to quarantine at home and monitor for symptoms. Employers **should not** identify the employee with a confirmed COVID-19 diagnosis by name due to confidentiality laws.

The CDC has offered Environmental Cleaning and Disinfection Recommendations to non-healthcare businesses with suspected or confirmed cases of COVID-19 to minimize spread of the virus to other employees.
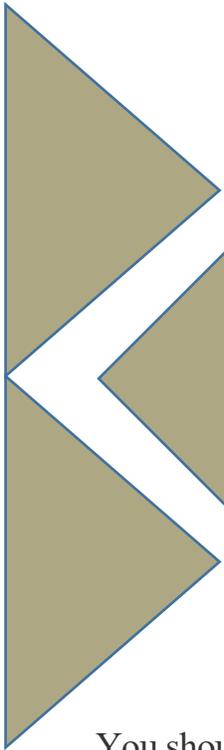
## What privacy concerns should I be aware of?

You should treat information about employees' symptoms and diagnoses as confidential information. In certain circumstances, if you have a group health plan, you can share information with government officials acting in their official capacity and with health care providers. However, those are limited circumstances.
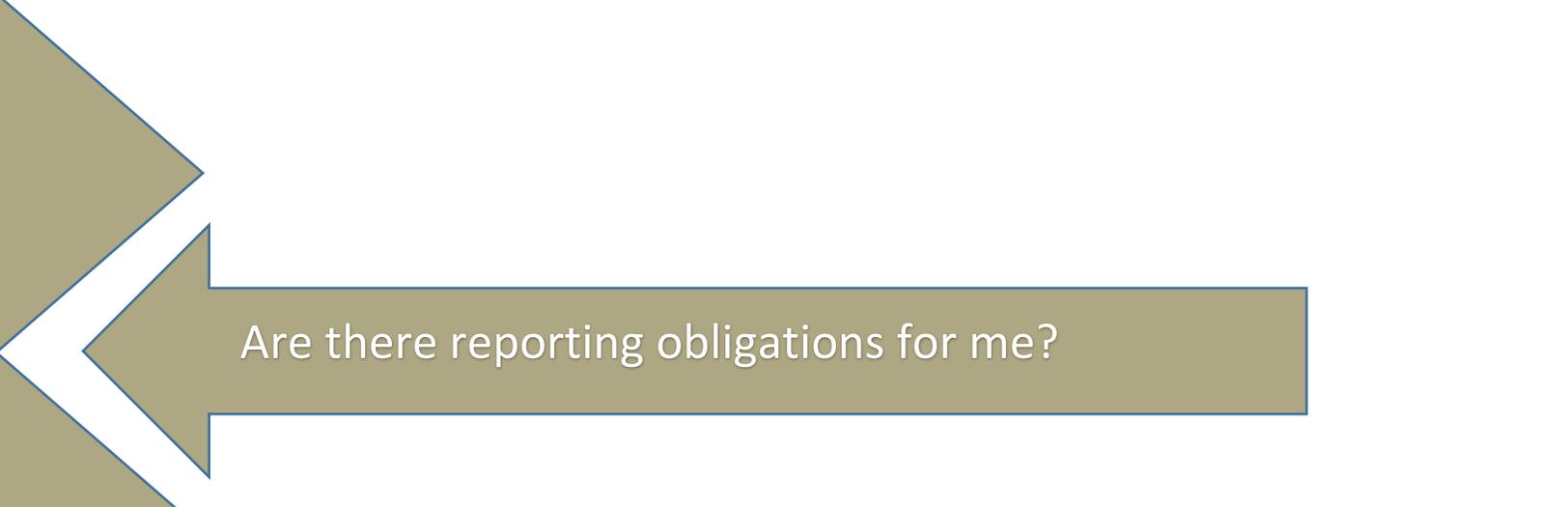
## Are there reporting obligations for me?

No, there is no obligation to report a suspected or confirmed case of COVID-19 to the CDC. Any healthcare provider that receives a positive test result will make mandatory reports.
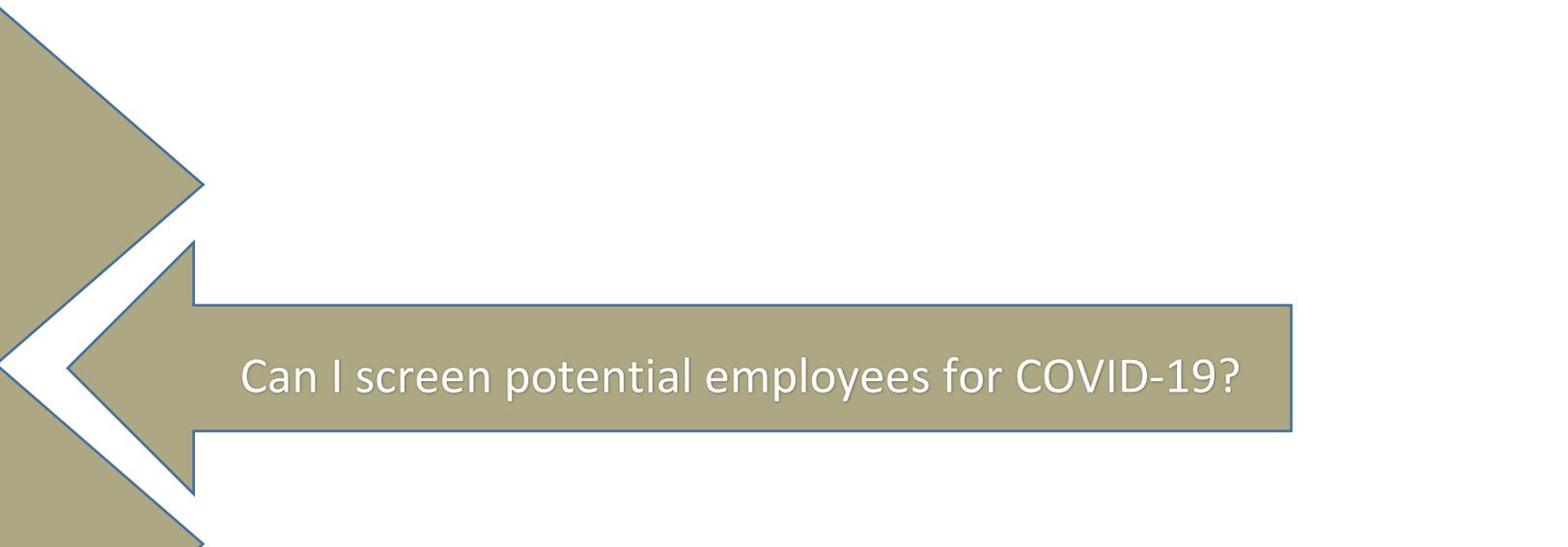
## Can I screen potential employees for COVID-19?

Qualified yes. If you have made a conditional job offer, you may screen the applicant for symptoms of COVID-19. If you elect to screen prospective employees, you must do so for all employees entering the same job type. If the prospective employee has symptoms of COVID-19 upon screening, you may withdraw the job offer if the position is one that requires an immediate start.

Keep in mind that OSHA requires employers to protect employees performing the screening who may be at risk for exposure if the applicant has COVID-19. To protect the screener, you should determine appropriate mitigation efforts to eliminate or minimize the risk of exposure. This can include providing personal protective equipment (PPE) to the screener, such as face shields, masks, gowns and gloves. Further, appropriate sterilization techniques should be applied to devices used in the screening process.

Again, individual states may impose additional obligations. If you have any questions, please contact Middleton Reutlinger.
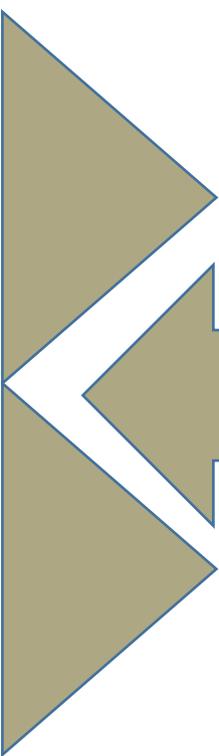
## What should I do with employees who have traveled or are planning to travel?

The United States Department of State has issued a travel advisory warning U.S. citizens to avoid all international travel. The U.S., Mexico, and Canada have also suspended all non-essential travel between the two countries and are essentially closing their borders.

If your employee has traveled to a restricted country, they should self-quarantine in their homes for 14 days after their arrival. Local and state public health officials are contacting individuals in the days and weeks following their arrival to coordinate this. Employers should tell employees to communicate any travel and directives from public health officials to their immediate supervisor.

As a best practice, you should encourage your employees to educate themselves about the risk of travel in the current environment. Monitoring for symptoms of COVID-19 in those employees who do travel following their return is also permitted and a best practice.
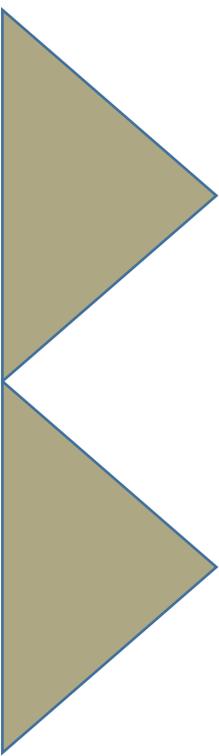
Employers have resources available to them addressing the COVID-19 pandemic. For example, several federal agencies have offered guidance for employers, including:

- Guidance on Preparing Workplaces for COVID-19 from the Occupational Safety and Health Administration (OSHA). This guidance is offered to four categories of employers based on the likelihood of risk the workforce faces. The categories are useful in formulating appropriate work practices and precautions.
- What You Should Know About the ADA, the Rehabilitation Act, and COVID-19 from the Equal Employment Opportunity Commission (EEOC). The guidance helps employers navigate how to comply with the Americans with Disability Act and Rehabilitation Act with regard to COVID-19.

While these resources provide employers with guidance, employers may still have questions that remain unanswered. Middleton Reutlinger is available to assist you through this unprecedented event.