



Is It Allergies or COVID-19?

How to decide when to send coughing workers home

By Allen Smith, J.D.

March 11, 2020

Allergy season is here. And so is the coronavirus outbreak, which the World Health Organization declared a global pandemic March 11.

How can employers tell the difference between allergies and COVID-19, and when should they send sick workers home?

While the symptoms of hay fever include sneezing, runny or stuffy nose, and itchy eyes, according to the Mayo Clinic, the symptoms of coronavirus include fever, cough and shortness of breath, according to the Centers for Disease Control and Prevention (CDC). Hay fever also can cause coughing, according to Harvard Medical School's Harvard Health Publishing (<https://www.health.harvard.edu/staying-healthy/no-coughing-matter>).

The possibility that employees may only have—or claim they only have—allergies may make sending them home more contentious. But experts say you may need to err on the side of caution and send sick employees home.

SHRM RESOURCE SPOTLIGHT

Managing Communicable Diseases in the Workplace (www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx)

'Hard Judgment Calls'

David Lewis, founder and CEO of the HR consultancy OperationsInc in Norwalk, Conn., said he would be open to keeping someone at work if they have the symptoms of allergies. But one of the symptoms—coughing—overlaps with the symptoms of coronavirus.

When an employer decides to send home someone who is coughing, "don't do this in the open," Lewis said. "Don't create an

argument or debate. This is a communication with little room for discussion."

Allergies are "hard judgment calls," said Jonathan A. Segal, an attorney with Duane Morris in Philadelphia and New York City. Employers should talk with their workers, encourage them to be honest and, if employers don't trust what they are saying, insist on some verification.

Bear in mind, though, that in a pandemic, medical verification may not be possible. The CDC is asking employers not to overburden the health care system by asking workers to show them doctors' notes.

"It's not horrible to say, 'go home for the day,' " especially if you pay the person for the day, Segal said. Employers should be sending the message anyway that if employees are sick, then they should stay home, according to the CDC.

Don't probe about a medical condition, cautioned Nicholas Reiter, an attorney with Venable in New York City. "There is a subtle but important distinction between asking if someone is 'feeling OK' versus asking if someone has a respiratory disease, such as chronic obstructive pulmonary disorder," he said.

"The former question, even if technically permitted under law, can quickly evolve into a conversation that leads to the latter inquiry, which is generally prohibited," he said. The Americans with Disabilities Act prohibits disability-related inquiries unless they are job-related and consistent with business necessity. But such an inquiry may be job-related and consistent with business necessity if an ill employee poses a direct threat to the health of others.

"If managers observe an employee with symptoms of coronavirus, that is sufficient to justify a medical inquiry," said Karen Buesing, an attorney with Akerman in Tampa, Fla.

A more direct approach than asking if a worker is OK may be in order. If an employer hears an employee coughing, for example, Lewis said, an employer has the right to require that worker to leave the workplace in light of its obligation to maintain a safe work environment for its employees.

Approval Requirement

Managers shouldn't act alone, experts say. HR or another manager should accompany the front-line manager when telling the employee in private that he or she should head home, Lewis said.

Requiring HR to approve the order to send someone home ensures managers are not engaged in conscious or implicit bias, Segal said. For example, if an employee of Asian descent who coughs is sent home but a white employee isn't, that may be conscious or implicit bias.

If a manager wants to send someone home, HR should ask whether anyone else has similar symptoms. If so, the manager probably should send that other person home too, he added.

After Sending Workers Home

After sick workers are sent home, if they test positive for coronavirus, then they should alert their employers as soon as possible, said Stacey Engle, president of Fierce Conversations in Seattle.

If an employee is unable to be tested because of a shortage of test kits, the worker should stay home—hopefully on paid leave—until the symptoms resolve or the employee tests negative, said Robin Shea, an attorney with Constangy, Brooks, Smith & Prophete in Winston-Salem, N.C.

Getting tested may not be feasible, however. "The medical community is overloaded and will be for the foreseeable future, making return-to-work approvals almost unattainable," Lewis said. Tests are also hard to come by.

Employees who have symptoms of acute respiratory illness should stay home until they are free of fever (100.4 degrees Fahrenheit or greater using an oral thermometer), signs of a fever and any other symptoms for at least 24 hours, without the use of fever-reducing or cough suppressants, according to the CDC.

Remember that an exempt employee must be paid for the entire workweek in which any work is performed, unless the Family and Medical Leave Act applies to the time not worked, Shea added.

Encouraging Employees to Stay Home

Employers should consider options for encouraging employees not to "tough it out" if they are sick, Reiter said.

Some employers have temporarily permitted employees to run a negative paid-leave bank if they have not yet accrued enough sick leave or paid time off so far this year, he noted. "Employees can then later replenish their paid-leave bank after returning to work in the future," he said. "This is a smart move for lowering the risk of an infection in the workplace, not to mention the risk of an OSH Act [Occupational Safety and Health Act] claim."

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