

LEGAL RESPONSIBILITIES IN THE TIME OF COVID-19

A pandemic is unexplored territory. The policies you design today are meant to remove ambiguity and enable decision-making at a time when your team is doing a lot of things for the first time.

On the one hand, you are looking to instill confidence in employees and customers by taking proactive steps to protect the health and well-being of everyone in the workplace. On the other hand, you need to do this without inadvertently introducing exposure to new legal risks.

Skillsoft has identified there are five important categories of policy development to consider through a legal lens. *Cross off the policy areas where you have a documented plan:*

TESTING AND SCREENING

CONTACT TRACING

REASONABLE ACCOMMODATION FOR DISABILITY

ANTI-HARASSMENT AND ANTI-DISCRIMINATION

TRANSPARENCY AND TRACKING OF LEGAL CHANGES

TESTING AND SCREENING

Employers may ask employees if they are experiencing symptoms of the virus or have been in close contact with someone with the virus. **Will you be screening your employees?**

- Yes No

ALL medical information about employees should be stored separately from personnel files with limited access to that medical information.

Testing can include a test for the virus as well as other tests. Since fever is sometimes a marker for the virus, employers can consider measuring temperature. **Will you be testing employees?**

- Yes No

Consider the frequency of screening and testing. **How often will you be screening or testing employees?**

- Before each shift When illness is suspected
 Weekly At the end of each shift

Policies should identify testing requirements and frequency.

CONTACT TRACING*

Employers who are made aware of an employee who is infected with the illness should notify those who may have been exposed at the workplace of the risk. Contact tracing, like testing, is considered a medical record and must be treated as such. Also, employers are responsible for recording cases of COVID-19 per OSHA requirements.

Be cautious when using a contact tracing app. Some apps communicate an individual's location and medical information to the employer, while others directly notify individual users if they have come in close contact with someone who has tested positive for COVID-19. Employers should consider the impact contact tracing apps may have on employee privacy rights.

Do you have the ability to accurately track who has come in contact with an individual should they test positive for COVID-19? This may include non-employees who have been at your facility.

Yes No

Will your contact tracing accurately cover an individual's interactions over the past 14 days?

Yes No

Will contact tracing be completed quickly? Will it be accessible from a secure, remote connection should the workplace be closed?

Yes No

Is contact information readily available for all those who may have come in contact with an employee should they exhibit symptoms or tested positive ?

Yes No

Can your organization document who is responsible for contact tracing in the event an employee tests positive?

Yes No

REASONABLE ACCOMMODATION FOR DISABILITY

If a job may only be performed at the workplace, you may need to implement reasonable accommodations for individuals with disabilities who are at a higher risk from COVID-19.

Accommodations for workers who request reduced contact with others due to a disability may include changes to the work environment such as designating one-way aisles, using plexiglass, tables, or other barriers to ensure safe distances between customers and coworkers. Temporary restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment may also be considered.

Do you have a process to communicate and document a way for employees to request accommodations? Remember that request can be made in writing or verbally.

Yes No

Do you have a process to evaluate requests to determine which can reasonably be accommodated and which pose an undue hardship on operations?

Yes No

ANTI-HARASSMENT AND ANTI-DISCRIMINATION

Employers can help reduce the chance of harassment by explicitly communicating to the workforce that fear of the COVID-19 pandemic should not be misdirected against individuals.

Hiring decisions cannot be made on the basis of being in a group or class of people that the CDC has determined to be at greater risk from COVID-19. However, an employer may choose to allow telework or to offer a postponed start date.

Will workplace safety measures, including any testing and contact tracing, be executed in a non-discriminatory manner?

Yes No

TRANSPARENCY AND TRACKING OF LEGAL CHANGES

Your team likely needs to operate under different circumstances than before the pandemic. For example, employees may no longer share tools or new sanitary procedures may have been put into place. You may also ask employees to physically distance from one another and from customers.

With new and updated policies necessary, the responsibility is on employers to ensure they are vigilant in tracking compliance with them.

Do you have a process to collect attestations acknowledging policy changes from each employee?

Yes No

Does your organization offer a comprehensive training program on new and updated policies?

Yes No

Feeling overwhelmed? Making, collecting, and auditing attestations is easy with Certitude. [Schedule a Certitude demo.](#)

*The EEOC FAQ, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, covers contact tracing in-depth should you want to explore the topic further.

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