

FAQs

COVID-19

STAFF

1 Should we be screening our staff when they arrive for work?

YES! Screen all staff at the beginning of their shift for fever and respiratory symptoms. This screening should take place immediately upon entry to the building. Actively take their temperatures and document absence of shortness of breath, new or change in cough, and sore throat. This screening should be done **in-person** by a staff member. The screener does not need to be a nurse but should be competency tested on the screening tasks. If an employee has symptoms, have them put on a face mask and self-isolate at home. View a screening tool here: https://www.careproviders.org/COVID_ScreeningTool.

Don't forget to allow ancillary health providers into your building (home care, hospice, physicians, therapies, etc.) but screen them the same way you would screen staff. Surveyors conducting investigations or focused COVID-19 surveys must also be screened.

2 What about staff that work at multiple facilities?

Facilities should identify staff that work at multiple facilities (e.g., agency staff; regional or corporate staff; part-time staff; contract workers, etc.) and actively screen and restrict them appropriately to ensure they do not place individuals in the facility at risk for COVID-19. Staff should be instructed to change clothes between work at multiple facilities. Staff are strongly encouraged to not work at multiple facilities.

3 What about staff with signs/symptoms that have not been tested?

- Healthcare providers (HCP) who have signs and symptoms of a respiratory infection should not report to work
- Any staff that develop signs and symptoms of a respiratory infection while on-the-job, should:
 - immediately stop work, put on a face-mask, and self-isolate at home;
 - inform the facility's infection preventionist, and include information on individuals, equipment, and locations the person came in contact with; and
 - be sent to be tested for COVID-19—make sure they inform the testing site that they are an employee of a long-term care congregate living setting—this should prioritize them for a test.

4 When can staff, who have been sent home due to signs & symptoms of COVID-19, return to work?

See "MDH COVID-19 Recommendations for Health Care Workers" guidance (<https://bit.ly/33ZCADn>). A non-test-based strategy is recommended and includes the following:

For HCWs with mild to moderate illness who are not severely immunocompromised:

- At least 24 hours have passed since recovery, defined as resolution of fever without the use of fever-reducing medications and improvement in symptoms (e.g., cough, shortness of breath); AND,
- At least 10 days have passed since symptoms first appeared.
- Practice of diligent hand hygiene and wearing a surgical face mask at all times until 14 days after illness onset.

For HCWs with severe to critical illness or who are severely immunocompromised:

- At least 24 hours have passed since recovery, defined as resolution of fever without the use of fever-reducing medications and improvement in symptoms (e.g., cough, shortness of breath); AND,
- At least 20 days have passed since symptoms first appeared.

A test-based strategy is no longer recommended to determine when to allow HCW to return to work but could be considered in specific situations to allow the HCW to return to work sooner than the non-test based strategy.

STAFF continued...

5 If there is a case in our facility, can we require staff to stay?

No, you cannot require people to stay, according to the Department of Labor and Industry Hours FAQ (<https://www.dli.mn.gov/business/employment-practices/hours-faqs>). The Nurse Practice Act does restrict patient abandonment, but that does not apply necessarily apply to unscheduled work.

Generally, the board identifies that patient abandonment results when a nurse has accepted responsibility for an assignment within the scheduled work shift, but the nurse does not either fulfill that responsibility or transfer it to another qualified person. This failure to fulfill a nursing responsibility may result in unsafe nursing care. Failure to practice with reasonable skill and safety is a ground for disciplinary action.

Employers are permitted to ask quarantined staff who are asymptomatic to return to work, assuming they remain asymptomatic and can offer appropriate PPE (surgical mask, gloves, eye protection).

6 Can my employer require me to work overtime and fire me if I refuse to work overtime?

The employer has the authority to establish the work schedule and determine the hours to be worked. There are no limits on the overtime hours the employer can schedule. Employees who refuse to work the scheduled hours may be terminated. Advance notice by an employer of the change in hours is not required.

7 What can we do if staff refuse to come to work?

You need to follow your current employment handbook; employee policies and procedures; and your bargaining agreement (if one is in place).

8 If staff need to stay home due to closure of schools or daycare, can we require them to come in?

No. But you can see if they are available for other shifts or times if partners/spouses/family are available to watch the kids at other times of the day. How can you or they make accommodations to help your staffing situation?

Gov. Walz implemented EO 20-02 (<https://www.leg.state.mn.us/archive/execorders/20-02.pdf>) closing schools for a specific period of time; that order was subsequently updated to close schools for the remainder of the school year. Included in that order was that schools, during their normally scheduled days, provide care to school-age children—12 years old or younger—of healthcare workers and emergency responders. “Healthcare staff” includes staff at nursing facilities and assisted living communities.

The state of Minnesota has a hotline set up for school and childcare questions: 651-297-1304 or 1-800-657-3504 (7:00 AM– 7:00 PM), as well as a website for childcare resources (<https://mn.gov/childcare/>).

The Children’s Defense Fund-Minnesota’s Bridge to Benefits screening tool (<http://mn.bridgetobenefits.org/ScreeningTool>) can be used to help you determine potential eligibility and information needed to apply for child care assistance and other public programs that support economic stability.

Families may also call 1-888-291-9811 for assistance with financial resources to afford care.

Also, the Minnesota DHS Child Care Assistant program (<https://mn.gov/dhs/child-care/>) has resources available.

9 An employee cannot work because they don’t have childcare due to COVID-19, what do you use, unemployment or the leave under FFCRA?

If an employee cannot work due to a childcare issue, they would likely be eligible for leave under Families First Coronavirus Response Act.

STAFF continued...

10 How will we handle staff shortages given current staff needing to isolate due to exposures, and/or staff not working due to PPE shortages?

Use typical tactics, including: overtime/double shifts; hero or bonus pay; 12-hour shifts; alternative schedules; use of corporate staff; or train non-clinical and/or management staff to work as nursing assistants using AHCA's eight-hour emergency "Temporary Nurse Aide" program (<https://bit.ly/2VZcvQG>).

If those tactics fail, the following is a progressive list of options, based on guidance from the Statewide Healthcare Coordination Center:

- Call back quarantined staff—provided they have PPE, have not tested positive, and are asymptomatic
- Reach out to related facilities or partners for staffing support
- Contact staffing agencies; (you are encouraged to have a contract NOW)
- Reach out to organizations with which you have entered a memorandum of understanding as part of your emergency preparedness planning
- Engage your trade association to see if they can assist in procuring staff
- Contact your area hospitals or clinics for staff that may be available
- Reach out to community paramedics
- See how your county's Medical Reserve Corps can assist (Minnesota Responds Medical Reserve Corps: 651-201-5700 or minnesotaresponds@state.mn.us)
- Contact your Regional Health Care Preparedness Coordinators (<https://bit.ly/2SBXPom>) or Public Health Preparedness Coordinators (<https://bit.ly/2SxEkxa>)
- Utilize the SHCC Minnesota Healthcare Resource Call Center (MHRCC) at 1-833-454-0149 (toll free) or 651-201-3970 (local)
- Explore emergency management options through your county (<https://bit.ly/2zVupuZ>)
- As a last resort, the Minnesota National Guard (<https://minnesotanationalguard.ng.mil/>)

11 If a staff member is sick and must stay home, should they use the state unemployment option rather than the employer paying and using the federal tax credit?

If an employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19 or because they are experiencing symptoms of COVID-19 and are seeking a medical diagnosis, they would be eligible for the Emergency Paid Sick Leave, as of April 1, 2020.

Regardless of length of employment, they are entitled to 80 hours of paid sick time. Part-time employees are entitled to an amount of paid sick time equal to the average number of hours they work over a two-week period. If at the end of that period, the employee is still unable to come back to work they may be eligible for FMLA (<https://www.dol.gov/agencies/whd/fmla/pandemic>).

Additionally, per the governor's EO 20-05 (<https://www.leg.state.mn.us/archive/execorders/20-05.pdf>), leave of absences due to COVID-19 will be presumed involuntary and the employee may be eligible for unemployment benefits, the determination would be made by the UIMN and would likely be predicated on whether or not the employee was receiving any pay during the leave period.

12 I need to hire nursing assistants—how can I do that?

With the CMS 1135 blanket waiver, they have waived the "four-month rule." As of April 20, 2020, the Minnesota Department of Health indicated that they will waive the four-month requirement as well. We have listed our recommendations for hiring a nursing assistant who is not on the registry in a document on our website (https://www.careproviders.org/COVID_WF). This would allow you to hire an individual that is not on the registry, provided they are enrolled in a nursing assistant training program and, with the waiver provisions, have them work for the duration of the emergency declaration. Some colleges are still enrolling students, and AHCA has an online program (<https://cnaonline.com/>); or this person could opt to challenge the test to become eligible to be placed on the registry.

STAFF continued...

13 Under the Families First Coronavirus Response Act (FFCRA) it states that employers may exclude “certain health care providers”—what does that mean?

On August 31, 2020, the Department of Labor issued an update to its FAQ (<https://bit.ly/3hYQBVw>), which states the following:

This first group is anyone who is a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA (<https://bit.ly/2SQCSpt>).

*The second group is any other person who is employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care. This group includes employees who provide direct diagnostic, preventive, treatment, or **other patient care services, such as nurses, nurse assistants, and medical technicians**. It also includes employees who directly assist or are supervised by a direct provider of diagnostic, preventive, treatment, or other patient care services. Finally, employees who do not provide direct health care services to a patient but are otherwise integrated into and necessary to the provision those services—for example, a laboratory technician who processes medical test results to aid in the diagnosis and treatment of a health condition—are health care providers.*

*A person is **not a health care provider merely because his or her employer provides health care services or because he or she provides a service that affects the provision of health care services**. For example, IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers are not health care providers, even if they work at a hospital of a similar health care facility.*

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA. For example, an employer may decide to exempt these employees from leave for caring for a family member, but choose to provide them paid sick leave in the case of their own COVID-19 illness.

14 If I am going to exclude some, or all, of our workers from the leave provisions under FFCRA, should I provide notice?

Employers should note that the health care provider exclusion is discretionary, not automatic. As such, and in order to avoid confusion, you should consider providing a short, simple notice to your employees to inform them of the fact that because they are included within the DOL’s definition of “health care provider” and are essential to the fight against COVID-19, they are not eligible for emergency sick leave or expanded FMLA leave under the FFCRA. Such a notice should also advise employees that these exclusions do not affect their eligibility for FMLA leave under the terms of the FMLA in place prior to FFCRA enactment

The DOL specifically states that employers should “...be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.” This gives weight to not applying a blanket exclusion, rather making the decision based on each job function as it relates to your organizations ability to respond to the COVID emergency. Things to consider before deciding to apply the exclusion:

- Existing sick leave policies
- Staff without benefits coming to work sick
- Costs of FFCRA leaves are reimbursable via payroll tax credits
- If NOT offering employee could be eligible for FMLA
- If NOT offering unemployment could apply
- You may want to seek your own legal opinion

STAFF continued...

- 15 Is there a definition/determination of who must pay the new FMLA? (assisted living asking)**
Under the Families First Coronavirus Act, the Emergency Family and Medical Leave Expansion Act (EFMLEA)—diverges from FMLA in that it applies to all employers with 1-499 employees. An employee would be eligible if they worked for you for 30 days and they're unable to work or telework because they must care for son or daughter under 18 years of age, because of school or child care closure or unavailability due to COVID-19.
- The employer is not required to pay for the first 10 days, but the employee can substitute paid accrued vacation, personal or medical or sick leave (note that an employer can't require this). Thereafter the employer must compensate the leave at 2/3 of the employees' regular rate up to a maximum of \$200 per day, and \$10,000 total—this would be prorated for a part-time employee. Find out more here: <https://bit.ly/2RudAxp>.
- 16 What questions can we ask in interviews regarding a job candidate's exposure to COVID-19 in their personal lives as well as other jobs they work?**
As a requirement of anyone entering your facility, you can and should perform a symptom screen (https://www.careproviders.org/COVID_ScreeningTool), which would give you those answers. However, it is possible that you are not conducting interviews on site.
- During the interview process it would not be advisable to ask specific questions regarding candidate's health, as this could be an ADA violation and/or potentially discriminatory. You can ask them if they're capable of performing the functions of job. And, if you require testing as a condition of employment you can and should provide that information at the time of an interview.
- 17 Does the new workers' compensation bill affect us?**
The new bill (<https://bit.ly/2XpAuJO>) specifically addresses workers' compensation claims for employees who contract COVID-19 during their duties as healthcare workers—including home healthcare workers—paramedics, emergency medical technicians, police officers and firefighters.
- The changes would also pertain to corrections facility officers and counselors, as well as childcare workers providing care for the children of healthcare workers and first responders. Such workers will be eligible for workers' compensation benefits without having to provide proof that they contracted COVID-19 from a particular patient on a particular day. But, to receive compensation, the employee's condition would have to be confirmed by a positive laboratory test or the diagnosis of a physician, physician's assistant or nurse, based upon the employee's symptoms.
- The proposed legislation would not be retroactive, instead only covering cases diagnosed on or after the day following enactment. It would sunset on May 1, 2021. The bill would also extend the target date for implementation of a new workers' compensation data management system.
- 18 Should all staff be wearing a mask?**
YES. Recent guidance is that ALL staff should wear a mask for source control (<https://bit.ly/3bUAGVg>) (minimizing the spread outward). This can be done using regular surgical masks or, if there is a shortage of surgical masks, cloth source control masks (<https://bit.ly/34bwog2>). Reserve N-95 masks for worker protection when providing aerosolizing procedures on a COVID-19 positive resident.
- 19 What about tuberculosis screening of new employees?**
On April 3, 2020, MDH's infection control division released new guidance for TB screening during the COVID-19 crisis. The relaxed guidance is available here: <https://www.health.state.mn.us/diseases/tb/temprulechg.pdf>.

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20 What's happening with background studies?

Beginning at 6:00 AM on Wednesday, October 21, 2020, the Department of Human Services (DHS) will return to conducting fingerprint-based background studies that meet all state and federal requirements, and entities will no longer be able to submit emergency background studies. This means that all providers using NETStudy 2.0 will be required to submit a new study for anyone still affiliated with their agency who only has an emergency study.

Entities are being asked to first prioritize new background study applicants (those who had not received an emergency study), and then as DHS fingerprinting capacity increases, begin submitting background study applications for study subjects who have already submitted an emergency study. Studies for staff who only have an emergency study for your entity and remain affiliated must be submitted within the 60-day transition period after the expiration of the peacetime emergency.

Find out more by visiting the FAQ pages here (<https://bit.ly/31111ka>) and here (<https://bit.ly/3lJP7AM>) on the DHS website.

21 Can I make COVID testing mandatory for my staff?

Employers can require their staff to get tested as a condition of employment, but they must follow whatever policies and union contract they have in place, in other words your policies need to match your practice.* This means a facility could mandate testing for continued employment and for new potential hires as a condition of employment as long as the facility pays for the test. If an employee refuses to test, they can be taken off the schedule, and their return dependent upon whatever return-to-work policies you have established.

Additional considerations

- Just as with temperature screening, screening/testing for COVID-19 must be conducted on a nondiscriminatory basis, which likely means that all employees entering the worksite must be tested
- Assuming the results of such testing are retained, they need to be retained as part of the employee's confidential medical record according to the ADA's requirements
- Any screening, test or inquiry that is broader than necessary to address the potential direct threat is prohibited
- Although unlikely, it is possible that an employee could have a medical condition that could require the employer to determine whether it can provide the employee with an accommodation, such as making available an alternative testing method to the (likely nasal swab) method being used
- Be aware that there may be an obligation under wage and hour laws to pay employees for time spent waiting to be tested, as well as time spent waiting for the results of the test, assuming the employee will not be admitted to the workplace until the employer has the results

**The Equal Employment Opportunity Commission (EEOC) updated their guidance on the Americans with Disabilities Act (ADA) and coronavirus, explaining that employers may screen employees for COVID-19. Any mandatory medical test must be job-related and consistent with business necessity (<https://bit.ly/2Wwk7KS>). The Equal Employment Opportunity Commission (EEOC) opined in its updated guidance on April 23, 2020 (see Section A.6 below) that employers may administer COVID-19 tests to detect the presence of the virus if certain conditions are met; specifically:*

- *First, consistent with the Americans with Disabilities Act (ADA), any mandatory viral testing for COVID-19 must be job-related and consistent with business necessity. In the context of the current pandemic, employers may take steps to determine if employees entering the workplace have the virus because, if they do, they will pose a direct threat to the health of others. Per the EEOC, an employer may choose to administer viral testing for COVID-19 to employees before they enter the workplace.*
- *Second, employers should ensure that the tests are accurate and reliable. The EEOC encourages employers to consult guidance (<https://bit.ly/3nQKqHk>) from the Food and Drug Administration about what constitutes safe and accurate testing, as well as guidance from the Centers for Disease Control and Prevention or other public health authorities, and to check for updates.*
- *Third, because viral testing only detects current infection, employers should still require that employees observe infection control practices (such as social distancing, regular hand-washing and other measures) at work to prevent transmission of the virus.*

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- 22** What do I do if an employee states they were exposed to COVID-19 outside of work?
MDH's COVID-19 Recommendations for Health Care Workers (<https://bit.ly/33ZCADn>) has guidance regarding health care worker (HCW) exposures. This includes "...HCW with household, intimate, or close community contacts who have confirmed or suspected COVID-19."

STAY INFORMED

The Care Providers of Minnesota website has a page set up solely for updated information and links to current guidance from the Centers for Disease Control & Prevention (CDC), Centers for Medicare & Medicaid Services (CMS), and Minnesota Department of Health (MDH). **Visit the Care Providers of Minnesota COVID-19 page:** careproviders.org/COVID-19.

Other helpful resources to stay informed:

- Centers for Disease Control & Prevention COVID-19: <http://cdc.gov/covid19>
- Minnesota COVID-19 information portal: <https://mn.gov/covid19/>
- Minnesota Department of Health COVID-19: <https://www.health.state.mn.us/diseases/coronavirus/>
- AHCA/NCAL COVID-19: <https://www.ahcancal.org/Coronavirus>
- CMS guidance updates to state agencies: <https://go.cms.gov/2ISXB75>
- CDC "What's New" website: <https://bit.ly/2V9sgCO>
- Status of COVID-19 penetration in Minnesota:
<https://www.health.state.mn.us/diseases/coronavirus/situation.html>
- Minnesota DHS—Waiver and Modifications: <https://bit.ly/3e0nmAE>
- Minnesota DHS—NF Reimbursement Forms & FAQs: <https://nfportal.dhs.state.mn.us/>

Questions? We're here to help!



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