Things your employer can and can’t do because of COVID-19

My employer has made changes to its employment policies and practices in response to COVID-19, how do I know if what my employer is doing is legal?

In Texas, there are a number of laws that your employer, if covered, must follow. This is true even during a pandemic outbreak.

These laws include:

1. The Americans with Disabilities Act (ADA) and Chapter 21 of the Texas Labor Code protect employees or applicants with disabilities from discrimination in relation to their employment, including pay, promotions, firing, and more. These laws also require your employer to provide reasonable accommodations to qualified employees with physical or mental disabilities. In general, the ADA covers employers who have 15 or more employees (or receive federal funding). The ADA also covers most government agencies, employment agencies, and unions.

I was diagnosed with COVID-19 or have some of its symptoms, can my employer…?

• Force me to take leave? Yes.
• Make me work from home? Yes. If you have a disability your employer should provide you with an accommodation (unless it would be overly expensive). For example, if you have a hearing or vision impairment and need a special device or software to work from home, your employer should give it to you.
• Require a note from a doctor (or other medical professional) before allowing me to return to work? Yes.
• Delay my start date after offering me a job? Yes.
• Withdraw a job offer? Only if your employer needs the job to be filled immediately and delaying your start date is not an option.
• Fire me? It depends. If your COVID-19 diagnosis is a disability and your employer fired you because of the diagnosis or because of a belief that you have it, you may have a claim of discrimination against your employer—you can contact an attorney for advice on whether your employer broke the law by firing you. Note: your employer may still fire you for reasons unrelated to COVID-19 (e.g., mass layoffs or performance reasons).

What if I haven’t been diagnosed with COVID-19 or any symptoms, can my employer…?

• Make me work from home? Yes. Again, if you have a disability your employer should provide you with a needed accommodation (see above).
• Ask me why I was absent from work? Yes.
• Take my temperature, or ask me if I have symptoms like fever, chills, cough, shortness of breath, or sore throat? Yes. This is usually not allowed, but because there is now objective evidence that the COVID-19 pandemic is severe and poses a direct threat to the workplace, employers are likely allowed to ask employees if they have certain symptoms or take their temperature. However, your employer must keep this information confidential.
• Ask me if I have an medical condition that puts me at higher risk of getting COVID-19? Probably not, but it depends on how severe the pandemic becomes.
• What if I voluntarily disclosed that I have a medical condition that puts me at higher risk, can my employer make me take leave or work from home? Only if continuing to work would pose a serious risk to you or others in the workplace, and that risk can’t be addressed by a reasonable accommodation like working from home or unpaid leave. Again, your employer must keep this information confidential. For more information on what to do if you need to request leave, see our Leave FAQ.

This is legal information, not legal advice.
Can my employer choose to screen only certain employees during the pandemic?

Although your employer can likely screen for symptoms of COVID-19 such as fever, chills, cough, shortness of breath, or sore throat during a pandemic, it still may not do these things in a way that discriminates based on age, sex, race, national origin, religion, or disability.

For example, your employer might be allowed to screen only employees who interact with customers on a regular basis. However, your employer would not be allowed to measure the body temperatures of only its Hispanic employees, but not white employees.

If I have a mental health condition and my anxiety about COVID-19 has caused it to flare up and is affecting my ability to work. Can I request a reasonable accommodation?

Yes. A reasonable accommodation could include working from home, or a reasonable period of unpaid leave. For more information on what to do if you need to request leave, see our Leave FAQ.

If you are denied a reasonable accommodation, or your employer discriminates against you because of your disability, you may have a claim to get lost wages, your job back, and other damages. You must file a charge of discrimination quickly [within 180 days (for state law claims) or 300 days (for federal claims), if you don’t know what kind of claim you have, assume you have to file within 180 days.] You can contact an attorney for advice. You can also file a complaint of discrimination on your own by calling 1-800-669-4000 or online.