

Dear ARA Members,

To continue our efforts of keeping members informed about COVID-19, we will be sharing frequently asked questions to encourage members to read the information and stay updated.

Can an employee refuse to come to work because of fear of infection?

Employees are only entitled to refuse to work if they believe they are in imminent danger. Section 13(a) of the Occupational Safety and Health Act (OSH Act) defines "imminent danger" to include "any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act." OSHA discusses imminent danger as where there is "threat of death or serious physical harm," or "a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency." The threat must be immediate or imminent, which means that an employee must believe that death or serious physical harm could occur within a short time, for example, before OSHA could investigate the problem. Most work conditions in the United States, however, do not meet the elements required for an employee to refuse to work. Once again, this guidance is general, and employers must determine when this unusual state exists in your workplace before determining whether it is permissible for employees to refuse to work.

What actions can we take if an employee is exhibiting flu-like symptoms but refuses to leave the workplace?

You should first take a collaborate approach. Remind the employee that you are asking them to leave by making them understand the reasons why their departure is necessary to maintain the health and safety of the entire workplace. If benefits such as paid sick leave, use of accrued vacation, or something else that may appease them are available, you should explain these benefits and how the employee can utilize them. If the employee still refuses to leave the workplace, you can consider:

- (a) explaining that the employee is now trespassing on private property and if they do not leave you will be forced to call local law enforcement to escort them off the premises; or
- (b) terminating the employee for insubordination, which should however, be considered a last resort given the current situation.

When may an employee discontinue home isolation?

Per the CDC, following are the options for determining when a person may end home isolation, using either

- (1) **Time-since-illness-onset and time-since-recovery strategy (non-test-based strategy)** : Persons with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue home isolation –
 - At least three days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath);
 - At least seven days have passed since symptoms first appeared.
- (2) **Test-based strategy (simplified from initial protocol)**: Negative results of an FDA Emergency Use Authorized molecular assay for COVID-19 from at least two consecutive nasopharyngeal swab specimens collected ≥ 24 hours apart (total of two negative specimens). Individuals with laboratory-confirmed COVID-19 who have not had any symptoms may discontinue home isolation when at least seven days have passed since the date of their first positive COVID-19 diagnostic test and have had no subsequent illness. The EEOC confirmed that you may require a doctor's note stating the employee is fit for duty before permitting them to return to work.