



# COVID-19, HIPAA, AND EMPLOYERS

**Presented by  
David C. Smith**

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# TODAY'S PRESENTER

## **David C. Smith**

David C. Smith is Vice President of Compliance and Risk Management Strategies for EbenConcepts Company, a regional benefits consulting firm headquartered in North Carolina. He is a native of Banner Elk, NC and a graduate of the University of North Carolina at Chapel Hill and the North Carolina Central University Law School. His background includes work in government as a regulator and policy advisor with industry (Blue Cross and Blue Shield of North Carolina) in sales and marketing, and with both employers and agents as a compliance specialist, working with employers and insurance agents on federal and state issues that employers face, and consultant for large employer and self-funded group health plans.

David is a member of NAHU, serving in leadership positions at the local, state, and national levels. He speaks to employers, agents, brokers, and consultants throughout the country about the impact of various state and federal laws on the purchase and regulation of employer-based health benefits.

He has been recognized nationally for his public speaking, winning the 2011 William G. Wetzel Excellence in Public Speaking Award. David has also been recognized as one of our industry's top professionals, having been named the Employee Benefits Adviser of the Year in 2013 and the Harold R. Gordon Healthcare Professional of the Year in 2018.



# AGENDA

The COVID-19 crisis complicates the enforcement of several laws: HIPAA, ADA (Americans with Disabilities Act), and EEOC (Equal Employment Opportunity Commission) guidelines.

How do employers uphold these regulations while also taking basic safety measures like monitoring their employees' health?

# COVID-19 AND HIPAA





# COVID-19 AND HIPAA

## Redundancy

- Cross-train staff and IT personnel
- More than one person should know how to:
  - Complete tasks
  - Access accounts
  - Manage operations
- Have a plan for how to access accounts and continue operations in the event that someone becomes sick

# COVID-19 AND HIPAA

## Remote access

- Risks associated with remote access
  - Theft of unencrypted personal devices
  - Identity theft
  - Poor security practices when working from home
  - Unauthorized downloading of ePHI
  - Inadequate malware protection
  - Data corruption
  - System hacking

# COVID-19 AND HIPAA

## Remote access

- Keeping information secure while working remotely
  - Organization-approved devices
  - VPN
  - Encryption
  - Passwords
  - Firewalls
  - Anti-malware software

# COVID-19 AND HIPAA

## Remote access

- Creating work from home policies
  - Access levels
  - Access logs
  - Confidentiality Agreement
  - BYOD Agreement
  - Disaster Recovery Plan
  - Expectations
    - Employee availability
    - Employee productivity

# COVID-19 AND HIPAA

## Tips for employees

- Know your organization's remote work policies
- Only use devices approved by your organization
- Use your organization's VPN
- Disconnect from your organization's network when you finish working
- Encrypt and password protect all devices that access PHI
- Install firewalls and anti-malware software on your devices

# COVID-19 AND HIPAA

## Tips for employees

- Store all hard copy PHI in a locked filing cabinet or safe when you are not using it
- Secure your router
- Look out for malware
- Never leave devices unattended
- Create strong passwords
- Don't share passwords with coworkers
- Use two-factor authentication
- Never copy PHI to any media or devices not approved by your organization

# MONITORING EMPLOYEE HEALTH



# MONITORING EMPLOYEE HEALTH

## What to do if an employee tests positive for COVID-19

- The infected employee home should be sent home or asked not to come into the office
- Infected employees should stay home until released by their medical provider or local health provider
- Consider sending home all employees who worked closely with the infected employee
- Before they depart, ask infected employees to identify all individuals who worked in close proximity with them
- Do not identify the infected employee to others or you may risk a violation of HIPAA Privacy laws



# MONITORING EMPLOYEE HEALTH

**How to stay safe and monitor employee health while also abiding by:**

- EEOC/ADA regulations

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

# MONITORING EMPLOYEE HEALTH

## **How much can an employer ask about an employee's health during this time?**

ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

# MONITORING EMPLOYEE HEALTH

**When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?**

Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

# MONITORING EMPLOYEE HEALTH

**Can an employer require an employee to stay home if they have symptoms of COVID-19?**

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

# MONITORING EMPLOYEE HEALTH

## **When employees return to work, does the ADA allow employers to require a doctor's note certifying fitness for duty? (3/17/20)**

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

# MONITORING EMPLOYEE HEALTH

**How to stay safe and monitor employee health while also abiding by:**

- CDC guidelines
  - <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>

# MONITORING EMPLOYEE HEALTH

## Centers for Disease Control (CDC)

- Cleaning and disinfecting public spaces including your workplace, school, home, and business will require you to:
  - Develop your plan
  - Implement your plan
  - Maintain and revise your plan
- Reducing the risk of exposure to COVID-19 by cleaning and disinfection is an important part of reopening public spaces that will require careful planning.
- Every American has been called upon to slow the spread of the virus through social distancing and prevention hygiene, such as frequently washing your hands and wearing face coverings.

# MONITORING EMPLOYEE HEALTH

**How to stay safe and monitor employee health while also abiding by:**

- CDC guidelines
- OSHA regulations
- HIPAA rules



# MONITORING EMPLOYEE HEALTH

**How to stay safe and monitor employee health while also abiding by:**

- OSHA regulations
- <https://www.osha.gov/Publications/OSHA3990.pdf>
- <https://www.osha.gov/SLTC/covid-19/>

# MONITORING EMPLOYEE HEALTH

## **OSHA Focused on Workplace Safety**

- Expectation on employers to maintain a safe workplace
- Eliminating hazards from COVID-19 remains a top priority for OSHA
- Obligation to report workplace illnesses

# MONITORING EMPLOYEE HEALTH

**How to stay safe and monitor employee health while also abiding by:**

- HIPAA PRIVACY AND SECURITY
  - <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>

# MONITORING EMPLOYEE HEALTH

## HIPAA CONSIDERATIONS for EMPLOYERS

- One permitted HIPAA disclosure is to disclose PHI to public health authorities to the extent relevant to the authority and purview of public health authorities.
  - This includes disclosing positive test results for COVID-19 to state and local health departments, HHS, or the CDC as appropriate.
- Covered Entities may not disclose PHI to the media.

# OPENING BACK UP SAFELY



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Hospitality Industry: <https://www.backtoworksafely.org/>

CDC: <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>

# RESOURCES

- HHS: [COVID-19 HIPAA Bulletin](#)
- HHS: [OCR Announces Notification of Enforcement Discretion](#)
- EEOC: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)
- EEOC: [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)
- CDC: [Public Health Recommendations for Community-Related Exposure](#)
- [Safeguards for Remote Access](#)



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