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Expertise

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## [Can I Send a Sick Employee Home?](#)

Winter is not the only time of year when employees report to work when they are sick. Regardless of whether or not it's flu season, co-workers are often afraid of getting sick from fellow colleagues who come into the office instead of staying home to tend to an illness. This leads many employers to wonder, "Can I force someone to go home sick?"

When it comes to conditions such as the common cold, the answer is "yes."

An employer can tell an employee that they cannot come into work even if the person wants to work. OSHA recommends employees stay home if they are sick and the CDC recommends staying home until at least 24 hours after a fever ends. In most states, an employer can ask for a doctor's note stating that the employee can return to work. However, employers must not pry too much into the employee's medical condition to avoid running afoul of the Americans with Disabilities Act.

### **Cautionary note**

Many employers, rather than asking someone to stay home sick and not work, are instead asking individuals to telecommute. If feasible, this is a good alternative if someone wants to work rather than stay home sick. Just remember, as the employer, you must be consistent with who you send home and who you allow to telecommute.

Most importantly, employers must be cognizant of how they treat employees with serious illnesses the Americans with Disabilities Act and/or Family Medical Leave Act may cover them.

The rules that apply to the common cold do not apply when dealing with a "serious illness" covered by these laws. Therefore, before sending someone home for some serious disease or condition (for example, cancer or mental health issues), you should consult with HR.

### **Beware of inaction**

On the flip side, inaction can also get an employer into trouble. Under OSHA, an employer has an obligation to provide a workplace free from serious recognized hazards. Therefore, when dealing with a more serious contagion like pandemic influenza or Ebola, an employer may be subject to liability if they allow a "direct threat" (such as an employee sick with a serious disease) to come to work and expose other employees.

If you are considering medical screenings or quarantining individuals because you feel they have recently visited or been exposed to an at-risk nation or person, seek HR guidance first. Unless there is a direct threat to your workforce, you will likely be infringing on employee rights and exposing yourself to liability.

Finally, Employers should remember that if employees voice safety concerns and have reasonable justification to think that their work situation presents an imminent and serious danger to their lives or health, then they can

recuse themselves from working and cannot be retaliated against. Without a reasonable basis for this belief, an employee must report to work. Conditions such as seasonal allergies and the common cold will likely not escalate to a "direct threat" contemplated under the law. If this situation does arise, seek guidance.

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