

All employers should evaluate their business operations and ways they can mitigate the risk of spreading COVID-19, including considerations for employees who may identify themselves as being at greater risk of COVID-19 infection, in accordance with applicable employment laws. People who are at a greater risk include those who are more likely to experience severe illness from COVID-19 and those whose conditions or circumstances might put them at higher risk of exposure or difficulty receiving care. This document **supplements** existing guidance for general business, specific industries, and personal protective measures individuals are advised to take. Plans do not need to be submitted for review or approval. However, to ensure confidence of workers, employers are encouraged to make their plans available if requested.

1. Who is at greater risk?

People who are at higher risk for severe illness include those 65 years of age and older, and people of all ages with underlying medical conditions, particularly if not well controlled. Such underlying conditions include, but are not limited to, chronic lung disease, moderate to severe asthma, severe heart conditions, weakened immunity, severe obesity, diabetes, liver disease, and chronic kidney disease that requires dialysis. See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> for a current list.

People who are at risk because of health conditions or circumstances that might put them at higher risk of exposure or difficulty receiving care include people with some types of disabilities who cannot avoid coming into close contacts with others who might be infected, such as direct support providers, people who have trouble understanding information or practicing preventive measures, or people who might not be able to communicate symptoms of illness.

2. How do I know if an employee is at greater risk?

Employers should encourage workers who are at a greater risk to self-identify but should avoid making unnecessary medical inquiries. It is recommended that employers with questions on how to address employees at greater risk should consult with legal counsel. Additionally, some businesses and occupations have specific occupational health requirements or wellness programs involving an occupational health department which might be able to assist in confidential discussions with employees who have self-identified and request that assistance.

3. How can an employer make accommodations for employees who are at a greater risk?

First, employers should follow the Governor’s recommendations (<https://rebound.idaho.gov/>) and guidance from the Centers for Disease Control and Prevention (CDC) (<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>) and Occupational Safety and Health Administration (OSHA) (<https://www.osha.gov/SLTC/covid-19/>) for reducing workplace exposure for **all** employees, and for guidance for specific industries.

Employers should take particular care to reduce identified workers’ risk of exposure to COVID-19, while making sure to be compliant with the Family Medical Leave Act (FMLA), the Families First Coronavirus Response Act (FFCRA), the Emergency Paid Sick Leave Act (EPSLA), the Americans with Disabilities Act (ADA), the Genetic Information Non-Discrimination Act (GINA), and the Age Discrimination in Employment Act (ADEA).

- Employees who are members of at-risk populations should continue to work from home wherever possible. Some employees may need additional accommodations to work from home, such as specialized software (i.e.; speech to text software).

- Employers should make accommodations for such employees if they are unable to work from home. Employers should be mindful of the obligation to engage in the interactive process under the ADA. Some potential accommodations, whether offered under ADA or otherwise, that employers should consider include:
 - Offering the employees duties that minimize contact with customers and other employees, if agreed to by the employee.
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 - Providing medical masks (such as an N95 mask) instead of cloth face coverings for at-risk employees who must interact in-person with the public.
 - Minimizing travel of the employees to areas with higher community spread than in the community where the employee lives or normally works.
 - Placing the employees in offices with doors that can close rather than in common office space.
- Employers should not penalize at-risk employees who raise workplace concerns but work with the employee to create a plan for addressing specific concerns.
- Due to the complexities of employment laws related to making these accommodations, employers should work with their human resources and/or legal counsel.

4. Are there any additional considerations?

Employers should also consider providing work from home opportunities or accommodations for employees who live with household members who are at a greater risk to help limit exposure to the employee who then in turn could expose their household member.

Resources

People Who Need to Take Extra Precautions: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>

Occupational Safety and Health Administration: Safety and Health Topics/COVID-19: <https://www.osha.gov/SLTC/covid-19/>

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Idaho Human Right Commission: <https://humanrights.idaho.gov/idaho-law/types-of-discrimination/disability>

Pandemic Preparedness in the Workplace and the Americans with Disabilities Act: <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>