

# Privacy during a Pandemic: Questions and Answers



Privacy legislation is in place to ensure individuals are protected during the processes of collection, use and disclosure of personal information and personal health information. During a pandemic, public health directives aimed at minimizing health risks and protecting the population generally may result in a reduction of personal privacy rights.

It is recommended that the least privacy-intrusive way of collecting the minimum amount of personal information from employees is followed and that guidelines and protocols from government and health authorities are followed. During a pandemic, the powers to collect, use and disclose personal information and personal health information to protect the public health may broaden as the collection of some information may become a requirement. If that occurs, it will be managed by governments, health authorities and communicated with employers and employees.

## **Can managers ask employees if they may be absent from work in order to look after children (in the event of school and daycare closures) or care for elderly parents?**

You may wish to know if your employees might need to or are able to work from home or adopt an alternate work schedule to maintain business continuity and provide care for family members. To do this, you may need to collect personal information from employees. You should collect information in the least privacy-intrusive way and collect the minimum amount of personal information. For example, asking employees if they will require alternate work arrangements due to child or elder care, but avoiding asking for details such as how many children, age of children, health of parents, personal information or work information of a partner, etc.

It is understandable and appropriate that an employer will need to estimate how many employees could be absent and it can be accomplished without collecting more detailed information than is necessary.

## **Can managers ask for employees' personal phone numbers and personal email addresses in order to keep in touch with them?**

Generally, some managers will have this information already. However, if the information hasn't been previously collected, or is out-of-date, you can request this information and provide an explanation of why it is being collected, how it will be used, and who will have access to it. An employee is not obligated to provide this information, and there is cause for concern if alternatives should be sought such as planning for employees to call in to work at regular, agreed-upon intervals. Regular employee conference calls can be useful in this situation as well.

## **Can we track how many employees have been diagnosed, quarantined, or self-isolating?**

Privacy laws require that organizations make reasonable efforts to ensure that the personal information collected is accurate. It would be difficult for an employer to accurately track the number of employees that have been diagnosed, quarantined, or self-isolated. In addition, tracking accurately would require knowing a diagnosis and other personal information. In a non-emergency pandemic situation, it would not be considered reasonable for employees to disclose this detailed information to their employers.

## **If an employee calls in sick, can I ask them if they have been diagnosed or suspect they have the virus?**

It is understandable that an employer will need to track the number of employees away due to illness. Illness may be defined in a more broad term than normal during a pandemic due to quarantine and self-isolation. Ensuring the minimum amount of personal health information collected is still required while also allowing for appropriate business continuity planning.

## **When an employee calls in sick, can I ask them if they have the virus?**

Under privacy legislation, the minimum amount of personal health information can be collected for an authorized purpose. An employer will need to know if an employee is sick and cannot work, however an employer does not need to know a specific diagnosis and it should not be asked or required.

## **Can I send an employee home if I think the employee appears to be sick?**

This is not strictly a privacy issue and human resources policies should be followed. Details of an employee's illness should not be discussed with fellow co-workers. If an employee reveals they are quarantined or self-isolating due to a diagnosed illness with the virus or exposure, employees could be notified generally to take personal precautions, however, no individual should be identified.

## **Can we ask employees if they may have a higher risk of infection, for example, if they have asthma or a compromised immune system? Can I ask these questions about my employee's family members?**

Employers may only collect a reasonable amount of personal information and personal health information for an authorized purpose. Requesting this level of information would not be recommended. Instead of collecting this information, the manager should instead communicate information to all employees that certain at-risk employees should consider taking additional precautions and not be required to prove a health condition of themselves or others.

## **How do we inform other employees that an employee is unavailable for work without revealing a confirmed case or self-isolating case by inference?**

An employee may volunteer to a manager that they believe they have been diagnosed or possibly in contact with the virus. However, a manager should not share this information with others. A manager should say the employee is unavailable and provide information to assist with business continuity.

## **Is an employer required to report suspected cases to the government or health authority?**

No, an employer is not required nor responsible for reporting employee illness or exposure to anyone including government or health authorities. Employees should be encouraged to follow protocols.