

# Informational Legal Memo



TO: Indiana Public Libraries  
FROM: Indiana State Library  
RE: Library Roles in Pandemic Outbreak Coronavirus Disease 2019 (COVID-19)  
DATE: March 12, 2020

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The State Library has been getting questions about a library's obligations to staff and patrons in the event of an outbreak of the Coronavirus (COVID-19) or other pandemic disease. Symptoms of COVID-19 include:

- Fever
- Cough
- Difficulty breathing.

The Indiana State Department of Health currently advises that the immediate health risk to the general public from COVID-19 is low, making this a time to plan, not panic. It is, however, an evolving public health situation, so ISL will continue to monitor developments, watch for updates, and send out additional guidance if warranted. This memo attempts to address the most frequent legal questions we are getting on the subject.

## Q. What is the library's responsibility to staff and patrons regarding the coronavirus?

A. Currently the ISL does not find a legal duty to take any specific actions however, the Indiana State Department of Health advises public facilities to take "every day preventive measures" to help contain the spread of COVID-19. These include:

- Ensuring adequate handwashing facilities and supplies are available.
- Posting signs encouraging proper handwashing and respiratory etiquette.
- Encouraging sick employees to stay home.
- Encouraging patrons not to enter the building if they are sick.
- Performing routine environmental cleaning (cleaning all frequently touched surfaces in the workplace).

ISDH, [COVID-19 Information for Public Facilities and Organizations](https://www.in.gov/isdh/files/IN_COVID-19_Public_Facilities_03.02.20.pdf) ([https://www.in.gov/isdh/files/IN\\_COVID-19\\_Public\\_Facilities\\_03.02.20.pdf](https://www.in.gov/isdh/files/IN_COVID-19_Public_Facilities_03.02.20.pdf)).

In addition to the items listed above, the CDC also recommends that employers create an Infectious Disease Outbreak Plan to be ready to implement strategies to protect their workforce from COVID-19 while ensuring continuity of operations. CDC's [Interim Guidance for Businesses and Employers](https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-and-employers) (<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-and-employers>).

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[response.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html)).

The U.S. Department of Labor (DOL) recommends employers review leave policies and consider providing increased flexibility to employees and families. DOL also cautions that federal law mandates that flexible leave policies be administered in a manner that does not discriminate against employees because of race, color, sex, national origin, religion, age (40 and over), disability, or veteran status. DOL, [Pandemic Flu and the Family and Medical Leave Act: Questions and Answers](https://www.dol.gov/whd/healthcare/flu_FMLA.htm) ([https://www.dol.gov/whd/healthcare/flu\\_FMLA.htm](https://www.dol.gov/whd/healthcare/flu_FMLA.htm)).

We know that some libraries in Indiana have already started to:

1. Increase frequency of sanitizing public computer keyboards.
2. Clean public contact surfaces twice per day.
3. Make hand sanitizer available in numerous locations (public computers, circulation desk, and staff area) with signs encouraging use and encourage patrons to use hand sanitizer both before and after using the computer.
4. Encourage staff to wash hands frequently and thoroughly.

In addition to the measures described above, in states that have already seen significant numbers of COVID-19 cases, libraries have also begun to:

1. Cancel programs (either some or all for a temporary period);
2. Remove toys or other touch-heavy objects from children's areas;
3. Curb outreach to at-risk populations, such as retirement communities; and
4. Temporarily suspend requirement of a doctor's note for an extended staff absence.

For more suggestions and information you may consult the following resources:

- **Every Library** Resources for Libraries on Coronavirus: [https://www.everylibrary.org/resources\\_for\\_libraries\\_on\\_coronavirus](https://www.everylibrary.org/resources_for_libraries_on_coronavirus) includes a list of **What Libraries Can Do** that addresses things like reaching out to local department of health, and evaluating information for accuracy and accessibility to the general public.
- **Library Journal** page What Public Libraries Need to Know about the Coronavirus: <https://www.libraryjournal.com/?detailStory=what-public-libraries-need-to-know-about-the-coronavirus> suggests it is important for libraries to work to reduce public health anxiety and curb discrimination against Chinese and Chinese American community members by providing authoritative information on this virus, and on infectious diseases in general.
- **National Libraries of Medicine** recommendations for Libraries: <https://content.govdelivery.com/accounts/USNLMDIMRC/bulletins/27de9a1>.

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- OSHA lists prevention strategies as steps employers can take to protect employees at: [https://www.osha.gov/Publications/influenza\\_pandemic.html#steps\\_employers\\_can\\_take](https://www.osha.gov/Publications/influenza_pandemic.html#steps_employers_can_take). One example “expand internet, phone-based, drive-through window, or home delivery customer service strategies to minimize face-to-face contact.”

Q. Are there templates of procedures for libraries to handle the coronavirus? Or any flu pandemic procedures that can be adapted to coronavirus?

A. Sample policies and resources include:

- The [National Library of Medicine Coronavirus preparedness page](#) includes a free course that you can take during which you develop a one-page plan for continuity of operations.
- The ALA page on pandemic preparedness includes "Topics to include in an individual library policy" at <http://www.ala.org/tools/atoz/pandemic-preparedness>.
- Department of Health and Human Services Pandemic Checklist (Preparedness Response): <https://www.phe.gov/Preparedness/COVID19/Documents/COVID-19%20Healthcare%20Planning%20Checklist.pdf>.

Q. Would libraries be expected to remain open during a quarantine situation?

A. Absent a federal or state directive this remains a local decision for the library board. Consultation with your state or local department of health may provide information to help support the board’s decision either way.

Q. Our Emergency Closings policy doesn’t address forced closures by the federal or state government due to a pandemic. Is it up to each library to determine how and if staff gets paid?

A. Absent a directive from the state or federal level it remains a local library board decision (based on the library’s policies) whether the library is to be closed. You should also follow board approved library policies regarding whether staff should be paid during such closures.

Whether or not an employer is required to grant leave to an employee who is sick or caring for a sick family member will depend a great deal on the size of the library. A library that employs at least 50 people is considered a “covered employer” for FMLA purposes. An employee at such a library may be eligible to take up to 12 weeks of unpaid job-protected FMLA leave (and to continue group health insurance coverage) if the employee or a family member has contracted COVID-19 and experienced complications that create a “serious health condition.”

An employee can’t use FMLA to avoid exposure to a pandemic virus. Nor does FMLA cover employees staying home to care for children who are not ill but who are home due to school or child care closures or cancellations due to a pandemic emergency.

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Several federal agencies are encouraging employers not covered by FMLA to consider adopting more flexible non-punitive leave policies at least in the event of a pandemic emergency. Encourage your board to review and adopt policy language to address leave policies and procedures regarding pandemics and emergency closures due to widespread illness. Be aware, however, that federal law requires flexible leave policies to be administered in a way that does not discriminate on the basis of race, color, sex, national origin, religion, age (40 and over), disability, or veteran status.

Also see ALA's webpage on Pandemic Preparedness for a list of topics to include in an individual library policy: <http://www.ala.org/tools/atoz/pandemic-preparedness>; and other resources listed above under the question on templates.

**Q. If an employee is coughing and sneezing, are we permitted to send them home against their wishes? What if it's a patron? Coronavirus may change the game a bit, but in general, what are the rules?**

**A.** A library may take the following steps providing the actions are authorized by library policy and described in the employee handbook:

- Send a staff member home if the person appears to pose a health or safety threat.
- Require the staff member to use sick leave, personal leave, or authorized leave without pay.
- Potentially require a doctor note clearing the person to come back to work depending on the circumstances. (Although the CDC recommends that instead of requiring a doctor note it is more practical in the event of an actual pandemic to require that staff members not return to work until they are symptom free for 24 hours *without* the assistance of prescribed or over-the-counter medicine.) Either way, the policy must be applied uniformly to similarly situated people.

When making decisions to exclude employees from the workplace, remember that you cannot discriminate on the basis of race, sex, age (40 and over), color, religion, national origin, disability, union membership, or veteran status. In the case of an employee with disabilities, additional protections extended by the ADA require these additional steps before you exclude an employee with a disability from the workplace:

- obtain objective evidence that the employee poses a direct threat (i.e. significant risk of substantial harm); and
- determine that there is no available reasonable accommodation (that would not pose an undue hardship) to eliminate the direct threat.

The issue is a little different when it comes to patrons. Considerations will include:

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- Do you have board approved and publicized policy language stating that patrons who appear to pose health or safety hazards to the library or other patrons may be asked to leave?
- Who determines how much coughing and sneezing is too much or warrants asking a patron to leave? Unlike with a staff member, with a patron you will be less likely to know whether excessive coughing and sneezing is caused by allergies, emphysema, or virus.
- Because courts have found a constitutional right to have access to public information, a policy asking patrons to leave if they appear to pose a health or safety hazard to the library or other patrons must meet the following legal standard: the policy must serve a significant government interest (in a full-on pandemic this should not be difficult to meet), be narrowly tailored, and allow ample alternative channels to receive information. So be aware that your policy may be subject to attack if it is found to be too vague or arbitrarily enforced. Ideally your policy will identify alternate means for individuals who are asked to leave the library to obtain information. This could potentially involve home delivery of materials or limited hours during which material reserved online or by phone may be picked up in the lobby.
- Another option is to post a warning on the door identifying symptoms and asking sick patrons not to come in and endanger the health of others.

As always, we strongly advise that you consult your library's attorney before proposing changes or additions to your library's policies.