

Insights: Legal Alert

An Employer's Guide: Protecting Your Employees From Coronavirus (COVID-19)

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic is dynamic and continues to develop. Please monitor this site and/or your email for updates.

Just as the Severe Acute Respiratory System (SARS) outbreak in the early 2000s created significant new issues for employers, the rapid spread of a new and potentially fatal communicable illness, the “novel coronavirus” or “coronavirus disease 2019” (COVID-19), is likely to bring new health issues to the forefront of many workplaces. While COVID-19 was first detected in Wuhan City, China, it has since been detected in at least 37 locations internationally, including the United States. According to the Centers for Disease Control and Prevention (CDC), recent newly-diagnosed cases outside of China are outpacing the new diagnoses in China. As the United States prepares for the spread of the virus, the [CDC](#), [Department of Health and Human Services](#), [Department of Labor/Occupational Safety and Health Administration](#), and other governmental agencies have published a number of guidelines that will prove helpful to employers looking to navigate their responsibilities.

What is Coronavirus?

According to the CDC, coronaviruses are “a large family of viruses” that are common in humans and many different species of other animals, including “camels, cattle, cats, and bats.” Many strains of the common cold and flu are examples of coronaviruses. On rare occasions, animal-born coronaviruses can infect people and then spread from person to person. Examples of this include SARS and the Middle East Respiratory Syndrome (MERS), both of which had their origins traced back to infected animals. While the complete “clinical picture” with regards to COVID-19 is not yet known, the CDC believes that the disease is in the same family as SARS and MERS. While COVID-19 was initially transmitted from animals to humans, it is now being spread person-to-person. Infections are currently thought to be spread primarily through contact with infected surfaces and respiratory secretions associated with coughs and/or sneezes.

COVID-19's Impact on the United States

Worldwide, the total number of cases has now surpassed 80,000, and over 3,000 people have died. In the U.S., two deaths were reported over the weekend. As of the morning of March 2, the U.S. has confirmed 87 known cases of COVID-19 in the United States. Forty-two of those cases are attributed to passengers on the Diamond Princess cruise ship, with nearly 20 others being attributed to people who were either recently traveling to or

repatriated from China. However, beginning around February 26 and increasing since, U.S. health officials began reporting identified cases of COVID-19 infections in people who had not traveled to countries where the disease was already circulating and had no known contact with anyone exhibiting symptoms or known to have been exposed. While these infections appeared to represent the beginning of “community transmission” in the United States, over the weekend it was announced that the disease may have been spreading undetected for approximately six weeks in Washington State.

Accordingly, as the impact of COVID-19 is being felt by U.S. employers for the first time, and there is no known, totally effective treatment for the virus, employers would be wise to become familiar with the illness, issues it may pose in the workplace, and the best ways to prevent further spreading of the disease. As a general rule, when dealing with COVID-19 issues, employers should use caution to both evade the spread of the virus and to avoid violating federal and state employment laws.

Employment Issues Related to COVID-19

Although there have still been relatively few confirmed COVID-19 cases in the United States, the illness has shown an ability to spread rapidly in other parts of the world. Accordingly, U.S. employers should be ready to respond to the potential issues COVID-19 may create in the workplace. Notably, the CDC’s Director of the National Center for Immunization and Respiratory Diseases, Dr. Nancy Messonnier, said that people should expect that their lives may be disrupted. It is not a matter of “if” so much as “when” the virus will spread domestically, she said. Because it is still too soon to know what impact COVID-19 may have in the United States, individuals and employers should take some common-sense steps to help prevent additional contamination and person-to-person spreading of the virus. CDC and medical professional recommendations include:

- Get a flu shot and take any prescribed flu antivirals.
- Take every day preventative actions to help stop the spread of germs.
- Wash your hands often with soap and water for at least 20 seconds.
- Use hand sanitizing gel regularly, especially after touching public fixtures.
- If you cough or sneeze on your hands, wash your hands with soap and water to remove any respiratory secretions before using hand sanitizer. If your hands have debris or secretions, those will not be removed by hand sanitizer alone. Accordingly, you should wash your hands with soap and water, then apply sanitizer.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Avoid close contact with people who are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- If you have a cough with a fever, do not report to work. While a cough coupled with a fever is more likely to be the common cold or flu, minimizing exposure during this time will help limit the person-to-person spread of all coronavirus contagions, including COVID-19.
- If you have been in China or been exposed to someone sick with COVID-19 in the last 14 days, seek

treatment and follow [instructions](#) to minimize exposure to others.

Other Steps to Prepare the Business

- Evaluate whether and to what extent large-group functions and meetings are necessary and appropriate.
- Make arrangements with your facilities maintenance to enhance cleanings, including frequently touched surfaces and door handles, to reduce the risk of exposure.
- Ensure that employees have the technical capacity to work from home efficiently. This may involve having employees with laptops take them home nightly during an outbreak or otherwise make sure that home-bound employees have adequate means of working from home.

Practical Implications and Frequently Asked Questions

The guidelines and recommendations offered by the CDC and other agencies do not cover every possible scenario an employer may face related to COVID-19. Employers should use common sense to respond to individualized conditions created by their own unique operations, work environments, and geographic locations. We provide an assortment of best practices below:

Question - What Do We Do About Business-Related Travel to China, or Other Impacted Areas?

Currently, the greatest threat to U.S. employees is business travel to areas affected by the virus. All but the most critical business travel to areas impacted by COVID-19 should be postponed. Under appropriate circumstances, employers may consider asking employees and other individuals in the workplace to disclose non-business travel to COVID-19 affected areas or contact with COVID-19 infected individuals.

The CDC is recommending that all non-essential travel be ceased for China and South Korea, and that travelers going to Japan, Iran, and Italy all practice “enhanced precautions.” Travelers to Hong Kong are being advised to practice “usual precautions.” The CDC has further advised that “all travelers reconsider any cruise-ship voyages into or within Asia[,] at this time.” Similarly, the Department of State has classified Iran and China as “Do Not Travel” locations (although Iran’s classification is not based solely on preventing exposure to COVID-19), and has listed Italy, Mongolia, and South Korea as “Reconsider Travel.” Japan and Hong Kong are listed as “Exercise Increased Caution.” This situation is changing frequently and it is advisable to obtain frequent updates.

In light of these travel advisories and restrictions, it may be argued that employers have a legal obligation under the Occupational Safety and Health Act (OSHA) and its state counterparts to take affirmative steps to protect the health of employees traveling to COVID-19 affected areas on business. While OSHA does not specifically address risks associated with COVID-19, the Act’s ‘General Duty Clause’ requires employers to provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” 29 U.S.C. § 654(a)(1). Although the exact obligation in this situation has not been litigated, the general duty obligation needs to be kept in mind. Employers should be careful to avoid actions that may increase the likelihood of exposure. Consideration should be given to whether particular travel, such as to Asia, is appropriate

under the circumstances. Where travel to high-risk areas cannot be postponed, employees should be trained regarding the risks of exposure and protocols for reducing it.

Additionally, if the travel to high-risk areas is unavoidable, employers should provide their employees with appropriate personal protective equipment (PPE), along with continued support. As an example, an employer may consider reimbursing the employee for any PPE or medicine purchased.

Question - What Obligations Do We Owe to Our Non-Traveling Employees?

If employees returning from affected areas show symptoms of COVID-19, or if the U.S. becomes seriously affected, employers will need to consider measures to protect non-infected employees. For example, if an employee who has traveled to a COVID-19 impacted region exhibits symptoms, especially a fever and respiratory symptoms, some authorities advise that the employee be excused from duty while symptoms are present and for 14 to 24 days after the symptoms disappear. Employers and employees should also contact their state or local health department if they become aware of symptomatic employees or suspected exposure incidents. However, even in so doing, employers should be diligent to avoid reporting any confidential medical information about their employees. Of course, employers should also avoid unnecessarily denigrating or embarrassing the affected individuals or appearing to discriminate on a prohibited basis.

Question - Can We Require Employees to Obtain a Medical Certification?

Employers may consider requiring employees who are at a higher risk for COVID-19 infection, or who exhibit symptoms, to obtain medical certification to limit risk to other employees. Such a step should be looked at carefully as an employer doing so may be required to justify the requirement as mandated by "business necessity." Employees who are believed to be infected could be permitted to work remotely for 14-24 days following any symptoms or known exposure to a COVID-19 infected individual. If the employee is not eligible for 12 weeks of unpaid leave, the employer should consider holding the employee's job open, if possible. In general, employers should carefully evaluate the situation before imposing serious financial or professional consequences on an employee because they have been infected with COVID-19.

Question - Is Training Necessary?

Due to the high tensions surrounding COVID-19, and the many misunderstandings of the virus, employers may consider training their employees on the virus, its symptoms, and the best practices for avoiding exposure. Given the rapidity with which things are changing related to COVID-19, training the staff may help employers stay ahead of the building fear over this issue. Employers may wish to conduct these trainings remotely or online, however, to avoid unnecessary group meetings.

Question - What if Employees Wish to Telecommute?

A question that may arise is whether concerned employees may insist on the ability to telecommute to avoid feared exposure. If the employer is disinclined to agree, the issue may come down to how realistic the

employee's concern is, the impact on the business, whether the employee has a relevant disability, and what contractual rights the employee has. In some circumstances, employers may be wise to depart from their normal telecommuting policies to meet the situation, if a realistic justification can be shown. Of course, if an employee has a disability such as a deficiency in the immune system, that person's individual situation would need to be evaluated for a possible reasonable accommodation under the ADA and other disability laws.

Question - What if An Infected Employee Wants to Come to Work?

Another question is whether infected employees can be not only permitted but required to stay away from their regular place of work even if the exposed employee wants to come in. Employers may typically take action to prevent danger to the health and safety of other employees and this situation should fall under that rule. Employers should act on objective evidence, not unsupported fears. As well, the current situation is new and the courts have not yet addressed it, so caution is appropriate. Further, employers would need to be careful not to act prematurely or on the basis of inadequate information. They would also need to avoid the appearance of discrimination on some prohibited basis in taking this action.

Conclusion

Throughout this situation, employers must be cautious to ensure they are complying with all federal, state, and local laws. Specific laws that may be impacted by COVID-19 include anti-discrimination laws related to disability or perceived disability (including the Americans with Disabilities Act (ADA)), various leave laws (including state and local paid-sick-leave laws and the Family Medical Leave Act (FMLA)), health and safety laws (including OSHA), and privacy laws (including HIPAA). Employers may also face issues with wage and hour laws, especially if an employee thought to be exposed is prohibited from returning to work immediately when they desire to do so. The situation needs to be carefully evaluated before an employee thought to be exposed is compelled to suffer a significant financial penalty. Further, employers with unions may have a duty to consult with the union before implementing new policies related to COVID-19.

Should you need assistance responding to a specific COVID-19 issue, or preparing your workforce for an emergency, please contact any of the following Kilpatrick Townsend Labor & Employment attorneys:

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