

Navigating the Coronavirus: Best Practices For Employers

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03.09.2020

Employers, Human Resources and in-house counsel are grappling with how to respond to the Coronavirus (COVID-19). This provides employers with guidance on how to address the impact of the virus on the workplace and what employers can and cannot do. This is a rapidly developing issue, and this guidance should be reconsidered and/or modified as circumstances change.

What To Do Now

Do Not Panic – Employees and employers are rightly concerned about this issue. However, do not panic. Not everyone who has flu-like symptoms has the virus and you should not send everyone home who is sick or has the flu. An overreactive response by an employer could spark unnecessary panic in the workplace, disrupting operations.

Have a preparedness plan – Create (or review) an operations plan to be prepared and involve all necessary stakeholders (i.e., HR, operations, facility/maintenance, legal, etc.). At a minimum, the plan should:

- have a process in place of how to address an employee who is suspected of having exposure or symptoms, and determine who will make the decision of sending an employee home or prohibiting the employee from working.
- contain a communications protocol to notify employees of possible exposure, including who will communicate, the method and where

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employees can get more information.

- have a communication strategy to handle press inquiries or customer/client inquiries.
- address whether to limit business travel or cancel any upcoming conferences or large gatherings (consider phone or video conferences in lieu of in person meetings, even if individuals are in the building).
- identify how to handle increased employee absences due to illness (or suspected illness), school closings, disruptions in mass transit or employees who refuse to work because they are scared.
- identify positions that are eligible for work-from-home arrangements on either a temporary or permanent basis.
- prepare for how the business will continue to operate if there is mass absenteeism, especially the absence of key employees. Is cross-training possible?
- determine whether furloughs or temporary layoffs are may be necessary in the event of a reduction in business, supply, etc., and how will they be implemented.
- you are not required to report actual or possible infections to public health officials; however, state and local public health agencies have hotlines to make inquiries or voluntarily disclose infections at work. Have this information handy.
- OSHA does not require you to take more than reasonable steps to protect employees. You do not have to provide face masks or gloves.
- determine whether exposure at work or an infection from an employee is reportable to your workers' compensation carrier.

Be Proactive – Strongly encourage employees to take proactive measures to prevent infection:

- make hand sanitizer and tissues available.
- inform employees of the recommendations of health care professionals, such as:
 - washing hands often with soap and water for at least 20 seconds or use an alcohol-based hand sanitizer if soap and water are not available.
 - avoid touching eyes, nose, and mouth with unwashed hands.
 - covering your mouth and nose when sneezing or coughing, but not with your hands. Discard tissues after each use.

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- cleaning and disinfecting frequently touched objects and surfaces with recommended products. Work with your building's facilities department to confirm that they are taking appropriate steps to adequately clean and disinfect frequently touched objects, such as door handles, bathrooms and kitchen areas.

What You Can and Cannot Do

If you believe an employee may have COVID-19, you CAN:

- ask if the employee has flu-like symptoms, such as fever, chills, along with a cough or sore throat.
- “screen” employees who may be at high risk of infection and ask questions that would help determine risk of infection or exposure (i.e., persons who traveled to an area with an outbreak or people who may have been exposed to high risk individuals).
- separate and send home employees who appear to have flu-like symptoms *and* have other factors to suggest high risk for infection (i.e., travel or exposure to another person with COVID-19).
- encourage employees to go to a health care provider to be tested for COVID-19.

If an employee is confirmed to have COVID-19, you CAN:

- require the employee to provide medical documentation from a health care provider clearing the employee to return to work.
- inform employees that there is a risk they have been exposed to COVID-19 in the workplace, but maintain confidentiality as to the person who may have exposed them.
- discuss possible accommodations with the employee, such as working from home, leave of absence, etc.

If an employee cannot work:

- consider whether the absence may be covered by the Family and Medical Leave Act, especially if the employee is hospitalized or absent for three days or more. Remember, the standard is reasonable notice, so you should send the eligibility and notice of rights and responsibilities if there is a possibility that the FMLA may apply.
- consider whether any other paid or unpaid leave policies apply, such as sick, vacation/PTO or personal leave (for employees not eligible for FMLA), and whether you will require employees to use paid sick or vacation/PTO.

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- review legal requirements regarding whether exempt employees must be paid their salary. For example, if you require an exempt employee not to work, then they must be paid.

For employers of unionized employees – Be mindful of your collective bargaining agreement provisions on leaves of absence, accommodation for disabilities or medical conditions, furloughs, closure of facilities or departments, and other related provisions before you make any decisions related to the coronavirus. Discuss these issues with union representatives now.

You CANNOT:

Discriminate – Do not single out employees based on national origin, race, ancestry or citizenship status. Enforce harassment policies where other employees may make comments or jokes about an individual's national origin, race, ancestry or citizenship status.

- You cannot prohibit employees from traveling to destinations for non-business reasons, but you may encourage them to check the Centers for Disease Control's Traveler's Health Notices before making travel decisions.
- You can ask employees who have traveled to areas with COVID-19 outbreaks if they have any symptoms, but you cannot require these employees to stay home if they do not have symptoms.

Make disability-related inquiries – You may not make medical inquiries of disabled employees to determine whether they have a compromised immune system and are more susceptible. However, you may inquire why an employee has called off from work.

- You can ask non-disability-related questions, such as if employees will have trouble working if schools are closed, they need to care for other dependents, or if they are identified as high risk for illness (i.e., pregnancy, persons over 65 years of age, people with respiratory problems).
- If an employee with a disability voluntarily discloses their disability because they are concerned that they are susceptible, you must engage in the interactive process (determine what if any accommodation is appropriate under the circumstances) and keep this information confidential.

Require employees to take certain actions – You may not require that your employees get a flu shot or require them to submit them to medical testing if they have no symptoms and are not at high risk.

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Reliable Sources – There is a lot of misinformation out there and assumptions being made. You should make decisions based on reliable sources and follow recommendations from public health professionals.

SEVERAL GOVERNMENT AGENCIES HAVE CREATED GUIDES WITH HELPFUL INFORMATION ON THESE ISSUES:

- **Equal Employment Opportunity Commission:** PANDEMIC PREPAREDNESS IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT
- **Centers for Disease Control and Prevention:** Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19), February 2020
- **State of Illinois:** Coronavirus Disease 2019 (COVID-19)
- **City of Chicago:** COVID-19: Guidance for Businesses and Employers

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