



Just What the Doctor Ordered: Employer Guidance for Responding to COVID-19 Outbreak

March 2020

The recent outbreak of respiratory disease caused by a novel COVID-19 that was first detected in Wuhan City, Hubei Province, has left many employers across the country grappling with how to effectively and lawfully protect their employees.

According to the Centers for Disease Control and Prevention (“CDC”), there are currently tens of thousands of reported cases of the disease (recently named “COVID-19”) in China, with a growing number of cases in various international locations. In the United States, the CDC has confirmed 14 cases and has tested a total of 426 individuals. Another 39 people infected with the disease have been repatriated to the United States. Although most of these illnesses are associated with travel from Wuhan, the United States has reported at least two instances of person-to-person spread of COVID-19.

The COVID-19 outbreak presents a host of employment law concerns for U.S. employers across all industries, but in particular, those in high-risk environments (such as healthcare) and those with employees engaged in international travel. The following are some guidelines to help employers respond to the outbreak:

Educate Employees

- For employers that might be impacted by the disease, reassure employees that management is monitoring the outbreak, including travel restrictions and guidance, and supply employees with reputable resources regarding

COVID-19, its transmission, and how to prevent exposure. Employers should avoid offering medical opinions or unreliable information that might create unnecessary fear and anxiety among employees.

- Advise employees to check the CDC’s most recent guidance and recommendations before any international travel.
- Actively encourage and flexibly permit employees to stay at home if they have symptoms of acute respiratory illness, and remind employees of applicable sick leave or paid time off that might be available to them.
- Remind employees of applicable policies and procedures for reporting concerns and requesting leaves of absence and other accommodations. Train supervisors and managers on how to respond to such requests.
- To ensure consistent messaging and uniform application of company policies, appoint a dedicated individual in human resources to field and respond to questions, concerns and requests related to COVID-19.

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Ensure a Safe and Healthy Workplace

- Encourage respiratory etiquette, hand hygiene and routine cleaning of commonly touched surfaces in the workplace. Employers should also provide appropriate health and sanitation supplies around the workplace.
- Comply with Occupational Safety and Health Administration (“OSHA”) regulations for maintaining a safe and healthy workplace. Although all industries should follow OSHA’s recommendations and industry-specific guidance, precautionary measures are required for certain industries (such as healthcare) with a high risk of exposure to infectious disease.
- If an employee is confirmed to have COVID-19, inform fellow employees of their possible exposure to COVID-19 in the workplace, but maintain confidentiality about an employee’s health so as not to run afoul of the Americans with Disabilities Act (“ADA”) or similar state laws. Healthcare providers may also need to take into account any obligations under the Health Insurance Portability and Accountability Act (“HIPAA”) and consider public health reporting requirements, public safety needs, and the protection of its employees and patients.

Review and Implement Policies

- If possible, temporarily suspend work travel to affected areas and stay abreast of current travel guidance from reputable health organizations. Requiring travel

to high risk areas could expose employers to liability under OSHA or other employment laws. If an employee refuses to work or travel because of concerns related to COVID-19, carefully consider whether such concern is reasonable and consistent with current CDC guidance before insisting on travel or taking any disciplinary action.

- Consider implementing a temporary policy requiring employees that have traveled to affected regions (or are in direct contact with people who have traveled to affected regions) to stay at home for 14 days following their return (the suspected incubation period). This policy should be applied uniformly and not targeted at specific employees based on race, country of origin, or any other protected characteristic.
- Consider any request for accommodation arising from or related to COVID-19 just as the company would any other request for disability accommodation. An employee infected with COVID-19 (or even “regarded as” having the illness) could be protected under the ADA or similar state law as a “qualified individual with a disability.”
- Provide all necessary leaves required under state and federal law and/or company policy. A COVID-19 diagnosis will almost certainly qualify as a “serious health condition” under FMLA or equivalent state law. Once an employee has exhausted all leave, employers may still need to consider

affording additional time off as a reasonable accommodation.

- Review any telecommuting policy and facilitate remote working where applicable. Employers should use caution in requiring employees to work from home simply because they display certain symptoms, as many of the early symptoms of COVID-19 share similarities with the common cold. If faced with telecommuting requests by employees with concerns of potential exposure, employers should assess whether such concern is reasonable before refusing this accommodation.
- Avoid making any medical inquiries or requiring medical examinations of employees absent a reasonable belief that an employee’s medical condition poses a “direct threat” to the workplace, as required by the ADA. “Direct threat” is defined as “[a] significant risk of substantial harm to health or safety of self or others that cannot be eliminated or reduced by reasonable accommodation.” 29 C.F.R. § 1630.2(r).
- In determining potential risk of COVID-19 infection, employers should rely only on guidance from reputable public health agencies and avoid making any determinations of risk based on race or country of origin. Failure to do so could violate state and/or federal discrimination laws.

To read the CDC Interim Guidance for Businesses and Employers to Plan and Respond to COVID-19, click [here](#).

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Five Takeaways for Employers

The impact of COVID-19 is constantly evolving and will continue to present a host of legal issues for employers. Regardless of industry or location, employers should take the following action:

1. Closely monitor and communicate developments from U.S. public health authorities.
2. Implement appropriate policies and procedures to respond to and manage the concerns of employees.
3. Ensure a safe and healthy workplace in compliance with all federal and state regulations and guidelines.
4. Protect the privacy of employees.
5. Consult legal counsel to navigate the various OSHA and employment laws implicated by the outbreak.

For more information, please contact one of the authors or your Polsinelli attorney.

