

## Special Bulletin: Guidance to Employers for Responding to the Coronavirus

March 3, 2020

### Key Points

- With the WHO having declared a Public Health Emergency of International Concern, companies should take reasonable precautions to protect themselves and their personnel.
- Below are some suggested practices United States-based companies can adopt, based on currently-available information.
- Companies should closely monitor the guidance issued by leading health organizations and medical providers, as information regarding the virus continues to develop and may impact the measures discussed below.

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The continued spread of the 2019 Novel Coronavirus (“COVID-19”) has left U.S.-based employers scrambling to develop employment policies and practices to protect their companies and personnel. While the situation surrounding the disease is extremely fluid, with new revelations developing daily, this Special Bulletin offers our current view of best practices to respond to the emerging crisis:

#### 1. Continue to Monitor Developments

Because the Coronavirus is first and foremost a public health issue, employers should remain abreast of the latest guidance issued by the leading health organizations tracking the disease, including the Centers for Disease Control and Prevention (CDC), the World Health Organization (WHO), and the European Centre for Disease Prevention and Control (ECDC). Links to the relevant pages of their respective websites are as follows:

- [Centers for Disease Control and Prevention](#)
- [World Health Organization](#)
- [European Centre for Disease Prevention and Control](#)

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Companies should also be sure to monitor developments at the state and local level for information regarding public facilities, including public transportation and potential closures.

Health insurers and medical providers may also be useful resources for up-to-date information on the virus and how employers should respond.

## **2. Understand the Legal Framework**

Companies developing human resources protocols in response to the Coronavirus should be cognizant of the relevant legal backdrop. For example, the Occupational Safety and Health Act (OSHA) requires employers to furnish a place of employment that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm.”<sup>1</sup> Many states impose similar requirements.<sup>2</sup> These laws require companies to be proactive in their response to COVID-19 and any other employee health risk.

At the same time, other statutes may limit companies’ ability to take certain precautions. For example, the Americans with Disabilities Act (ADA) generally prohibits employers from requiring employees to undergo medical examinations unless “they are job-related and consistent with business necessity.”<sup>3</sup> Thus, a blanket policy requiring all employees to get tested for the Coronavirus, in the absence of any objective reasons to believe the individuals being tested have contracted the virus, could run afoul of the law, despite an employer’s best intentions in promulgating it.

Other laws also may be implicated by companies’ responses to the Coronavirus. Employees who contract the virus, or who care for dependents who have become sick, may be entitled to leave under various laws (e.g., the Family Medical Leave Act, New York Paid Family Leave Law, New York City Earned Safe and Sick Time Act and applicable state short term disability laws), depending on the relevant facts and circumstances. Federal and state wage and hour laws require companies to compensate employees based on time they spend working outside the workplace. To the extent companies impose limitations on employees’ personal travel, state statutes prohibiting discrimination based on employees’ recreational activities also may come into play.

## **3. Establish an Infrastructure**

As is the case in any potential crisis, companies should ensure they have an effective chain of command for responding to COVID-19. Companies should designate an individual, group, committee or task force to coordinate their response, including clearly communicating with company employees regarding the company’s protocols and expectations. Such point-persons should remain abreast of the latest developments regarding the virus, remain in regular contact with other company decision-makers and the company’s legal counsel, and help ensure that the company speaks with “one voice” regarding its response.

## **4. Encourage Commonsense Precautions**

The CDC has recommended that businesses take the following steps, among others:

- Actively encourage sick employees to stay home from work and seek prompt medical attention.

- To the extent employees exhibit signs of illness, such as repeatedly coughing or sneezing, send them home and encourage them to promptly consult with medical providers.
- Remind employees to cover their mouths and noses when they cough or sneeze, and to immediately throw used tissues in the garbage.
- Remind employees of the importance of regularly washing their hands (for at least 20 seconds with soap and water) and/or using an alcohol-based hand sanitizer containing at least 60 percent alcohol.
- Stock up on relevant needed supplies, including soap, hand sanitizer, tissues, paper towels, disinfectant, and trash receptacles.
- Encourage the regular cleaning of frequently-touched surfaces in the workplace, such as workstations, countertops, and doorknobs.
- Encourage employees to avoid close contact with individuals who are ill, whether inside or outside the workplace.
- If a member of an employee's household contracts the Coronavirus or exhibits flu-like symptoms, consider directing the employee to remain out of the workplace for a period of time, as discussed below.

See <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>.

Members of a company's senior management can play a particularly important role in responding to the virus, including leading by example and not coming to the office if they are exhibiting signs of illness.

## 5. Implement Temporary Travel Restrictions

Companies also should consider temporarily restricting or prohibiting business travel to high-risk areas, and perhaps limiting travel more broadly, as circumstances dictate. Such restrictions could prove important both to protect employees from exposure to COVID-19 and to limit the risk of travelers becoming stranded by travel limitations or quarantines. A growing number of Fortune 500 companies have implemented such measures, ranging from discouraging travel to certain affected regions to flatly banning all non-essential domestic and international trips.

As of March 3, 2020, the CDC has advised travelers to avoid all non-essential travel to China, Italy, South Korea and Iran, and this past weekend, the Trump administration issued new travel restrictions for several of these countries. The CDC also has identified Japan and Hong Kong as locations with a heightened risk of transmission (<https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>). Several business travelers to or from these locations have been stranded away from home as a result of governmental restrictions imposed during their trips.

Reports also indicate that the virus is spreading rapidly. The CDC reported a 14 percent increase in countries with confirmed cases of the Coronavirus in just 24 hours last week: As of 11:00 AM ET on Thursday, February 27, the CDC website listed 50 different countries with confirmed cases of COVID-19; by 11:00 AM ET on Friday, February 28, the list was up to 57 countries with confirmed cases. As of 12:00 PM ET on March 3, 2020, an additional 16 countries have been added to the CDC's list, bringing the total number to 73.<sup>4</sup> Meanwhile, at least 12 U.S. states have reported

cases of the disease,<sup>5</sup> and media outlets have reported that at least 6 people have died from the Coronavirus in Washington state alone.<sup>6</sup> Under these circumstances, the safest course may be to limit travel to the extent feasible until further information regarding the spread and threat of the virus becomes available.

As of March 2, 2020, U.S. officials were advising companies to also limit large in-person gatherings to the extent possible, regardless of whether travel is required. As an alternative, companies can consider holding virtual meetings via telephone or videoconference, or rescheduling planned events to a later date.

Companies also should consider discouraging employees from taking non-essential personal travel, at least to areas identified by the CDC as presenting heightened risk. Discussions surrounding employees' personal travel plans can be sensitive, with some employees having family, friends or significant others living elsewhere and other employees already having planned and/or paid for trips. Dissuading personal travel also theoretically could implicate certain state and local laws prohibiting discrimination against employees who engage in particular recreational activities.<sup>7</sup> But given the high stakes and the clear non-discriminatory reasons for discouraging risky travel, companies may wish to advise their employees to proceed with caution in this regard.

## **6. Consider Implementing Self-Quarantines**

To the extent employees do travel to areas presenting increased risk, either for business or personal reasons, or are otherwise exposed to the Coronavirus, companies should consider requiring them to “self-quarantine” for a period of time rather than immediately returning to the workplace. According to the CDC website, the recommended quarantine period for COVID-19 is two weeks, “because 14 days is the longest incubation period seen for similar coronaviruses.” To the extent companies have policies limiting or prohibiting remote work arrangements, they may consider temporarily amending such policies where practicable for employees at heightened risk of exposure.

Imposing quarantines can lead to other legal or contractual issues of which companies should be cognizant. For example, if employees work remotely during a quarantine, they must be compensated for doing so. For non-exempt employees, care should be taken to record their hours of work, to ensure they are paid accurately and receive any required overtime. Exempt employees also must be compensated if they perform work during a workweek and/or are contractually entitled to such pay. Companies also should ensure that a quarantine does not inadvertently trigger any provisions of an applicable employment contract, severance plan, or other document, such as a provision permitting employees to resign for “Good Reason” under some circumstances.

## **7. Engage in Strategic Contingency Planning**

Finally, companies should consider engaging in business continuity planning so that they are prepared for a worst case scenario. They should ensure that essential personnel are trained and equipped to work from home, if needed, and should consider beta testing such work arrangements. As part of this effort, companies should ensure that their cybersecurity protections are sufficient for remote usage, and that employees are well-versed on best practices for maintaining information security while working outside the workplace. Companies also should ensure they have a mechanism for communicating with employees and other key individuals in the event

of an emergency.<sup>8</sup> Hopefully, companies' contingency plans will never need to be implemented, but prudence suggests being prepared just in case.

<sup>1</sup> See OSHA General Duty Clause, 29 USC § 654(a)(1).

<sup>2</sup> See, e.g., Cal. Lab. Code §6401 ("Every employer shall . . . adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees."); Md. Code, Lab. & Emp. §5-104(a) ("Each employer shall provide each employee of the employer with employment and a place of employment that are: (1) safe and healthful; and (2) free from each recognized hazard that is causing or likely to cause death or serious physical harm to the employee.").

<sup>3</sup> See 42 U.S.C. §12112(d)(4)(A); 29 C.F.R. §1630.14(c).

<sup>4</sup> These include Afghanistan, Algeria, Andorra, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Brazil, Cambodia, Canada, China, Croatia, the Czech Republic, Denmark, the Dominican Republic, Ecuador, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Macau, Malaysia, Mexico, Monaco, Morocco, Nepal, the Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Oman, Pakistan, the Philippines, Qatar, Romania, Russia, San Marino, Saudi Arabia, Senegal, Singapore, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, the United Arab Emirates, the United Kingdom, the United States and Vietnam.

<sup>5</sup> These include Arizona, California, Florida, Georgia, Illinois, Massachusetts, New Hampshire, New York, Oregon, Rhode Island, Washington, and Wisconsin.

<sup>6</sup> See <https://www.npr.org/sections/health-shots/2020/03/02/811161998/coronavirus-2nd-person-dies-in-u-s-new-cases-reported-in-florida-and-new-york>.

<sup>7</sup> See, e.g., N.Y. Lab. Law § 201-d(a)-(c) ("Unless otherwise provided by law, it shall be unlawful for any employer . . . to . . . discriminate against an individual . . . because of . . . legal recreational activities outside work hours . . .").

<sup>8</sup> Of course, companies' planning should go beyond human resources matters, and should cover such things as supply chains, client-service techniques, regulatory compliance, continuity with business partners, *etc.*, but such steps are beyond the scope of this article.

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