

Blog Post

What Employers Need to Know about Coronavirus

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Although there have only been a handful of confirmed cases of the 2019 Novel Coronavirus (2019-nCoV or the coronavirus) within the United States so far, employers are nevertheless well-advised to take affirmative steps to protect their employees from this rapidly spreading respiratory illness – even if the employers do not have any operations or employees based in China, where the illness is believed to have originated.

Travel Restrictions

Employers who have workers who are based in or travel to China should be aware that the U.S. Department of State has issued a “do not travel” advisory to the entire country. The advisory provides that travelers “should be prepared for the possibility of travel restrictions with little or no advanced notice.” President Trump followed this travel advisory by signing a proclamation barring most foreign nationals who traveled to China within the past 14 days from entry to the United States. The proclamation went into effect on February 2, 2020.

As a result, anyone who enters the United States after being in China during the prior 14 days (believed to be the virus’ incubation period) will have restrictions placed on their movements. Travelers from Hubei Province will be subject to a mandatory quarantine of up to 14 days, and travelers

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from other regions of China will undergo health screenings at selected ports of entry. These ports currently include:

- JFK Airport in New York;
- O'Hare Airport in Illinois;
- San Francisco International Airport in California;
- Seattle-Tacoma International Airport in Washington;
- Daniel K. Inouye International Airport in Honolulu, Hawaii;
- Los Angeles International Airport in California;
- Hartsfield-Jackson Atlanta International Airport;
- Washington Dulles International Airport in Virginia;
- Newark Liberty International Airport in New Jersey;
- Dallas/Fort Worth International Airport in Texas; and
- Detroit Metropolitan Airport in Michigan.

Travelers from regions of China other than Hubei who do not have any symptoms are being asked to monitor their health and practice “social distancing” for 14 days. Social distancing includes remaining out of public places, which can include the workplace. The above restrictions do not apply to travelers from Hong Kong and Macau.

Ensuring Employers Continue to Meet their Legal Obligations

Employers suspecting that an employee has been exposed should instruct that employee to stay home for at least 14 days to ensure no symptoms of the virus develop. Employers may also wish to instruct the employee to obtain an authorization from his or her physician attesting that return to work would pose no risk. Of course, in doing so employers

should be mindful that they must continue to meet their duties under the law.

For example, the Americans with Disabilities Act (ADA) provides that employers cannot discriminate against employees for an actual or perceived disability, and prohibits employers from disclosing confidential medical information. The U.S. Equal Employment Opportunity Commission (EEOC), which issued a fact sheet on pandemic preparedness and the ADA, has clarified that employers may send workers home if the workers exhibit influenza-like symptoms during a pandemic. Advising such workers to go home is not a disability-related action if the illness is akin to seasonal influenza or the 2009 spring/summer H1N1 virus, for example. Additionally, the action would be permitted under the ADA if the illness were serious enough to pose a “direct threat,” meaning a significant risk of substantial harm even with reasonable accommodation.

Employers should also continue to adhere to all applicable leave laws, such as the Family and Medical Leave Act (FMLA). Specifically, depending on the facts, the coronavirus may qualify under the FMLA as a “serious health condition,” in which case an employee may be entitled to FMLA leave. Employees may be eligible for leave if they are taking time off to verify whether they have a serious health condition. Employers should also be aware that they risk exposure to defamation or invasion of privacy claims for incorrectly identifying individuals as infected.

Takeaway for Employers

Employers who may have employees currently located in China, or who plan on traveling to or from China, should take all precautions to ensure the safety of their employees while continuing to adhere to their legal obligations. Given the fast-moving nature of the coronavirus, employers can ensure a more efficient and effective response by maintaining

a direct line of communication with all employees such that they can quickly be made aware of any changes (e.g., hours of operation) that result from the coronavirus. Where necessary, employers are also advised to encourage employees to work remotely or from home, particularly if they have been in close contact with someone who has or is being screened for the coronavirus. Lastly, employers should consider adapting their leave and/or safety policies to ensure employees have the information and resources they need in the event of a pandemic.

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