



NORTH RISK PARTNERS™

Coronavirus: HR Considerations for Employers

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Introduction

By now, employers are aware of the coronavirus (officially named COVID-19) and its growing impact on the global supply chain. Employers are increasingly faced with a related concern—how the virus may impact the workforce, and what employers should be doing right now.

It merits emphasizing that the coronavirus has not been officially declared a pandemic. According to the Centers for Disease Control (CDC), there is currently no evidence of widespread transmission of the coronavirus in the United States. The U.S. Department of Labor (DOL) further notes that without regular human-to-human contact, most American workers are presently at low risk of contracting the virus.

Introduction

The DOL has advised that certain workers are at a heightened risk of exposure. Exposure risk is higher for workers in:

- Health care
- Death care
- Laboratories
- Airline operations
- Border protection
- Solid waste and wastewater management
- Positions that require travel to areas impacted by the virus



Introduction

Employers in the above industries should follow industry-specific guidance and/or seek legal assistance in determining what modifications should be made to following general guidance.

Definition

Coronavirus is a new respiratory virus that originated in Wuhan, China. The virus is contagious and potentially fatal. It is suspected that it is transmitted through coughing and sneezing by infected individuals. At the present time, there is no vaccine, cure or specific treatment.

Spread

Health authorities have not confirmed how coronavirus is transmitted but suspect it is spread person-to-person. There is also evidence that the virus has been spread by animal sources, including individuals with links to seafood or animal markets. They do not believe you can get it from air, water or food.

Survival

Currently, coronavirus has a fatality rate of less than 3 percent. As such, the majority of those affected so far have survived the disease.

Signs and symptoms of coronavirus

Individuals infected with coronavirus have displayed the following symptoms:

- Mild to severe respiratory illness
- Fever
- Cough
- Difficulty breathing
- Death



Coronavirus is infectious

Virus transmission may happen on a spectrum, and authorities are not sure if the virus is highly contagious or less so. For person-to-person transmission, health authorities suspect the virus is spread through coughing and sneezing, similar to how influenza and other respiratory pathogens are spread.

The incubation period, or the time interval from infection to onset of symptoms, is from two to 14 days. During this period, an individual can be infected and spreading the disease although they may not be experiencing the signs and symptoms of the virus.



Protection from the virus

Because there is currently no vaccine to prevent infection, the best way to protect yourself is to avoid being exposed to this virus. The CDC recommends the following additional steps:

Protection from the virus

- Wash your hands often with soap and water for at least 20 seconds. Use an alcohol-based hand sanitizer that contains at least 60 percent alcohol if soap and water are not available.
- Avoid touching your eyes, nose and mouth with unwashed hands.
- Avoid close contact with people who are sick.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.



Suspicion about an infection

If you exhibit symptoms of coronavirus within two weeks of traveling from China or other impacted location, you should contact a health care professional and mention your recent travel. If you have had close contact with someone exhibiting coronavirus symptoms who has recently traveled from China or other impacted location, you should call ahead to a health care professional and mention your close contact and the person's recent travel. Your health care professional will work with your state's public health department and CDC to determine if you need to be tested for coronavirus.



Employees returning from an impacted location on the CDC website list

You should consider telling employees returning from an impacted location that they should remain away from work for 14 days from their return. You can also consider telling the employees to self-monitor for any symptoms of coronavirus. If any of these symptoms occur, employees should consider being evaluated by a health care provider. Further, even if not symptomatic, employees may also want to consult a health care provider to confirm that they are not infectious before returning to work.

Travel to impacted locations

Employers may consider restricting employee travel to the particular areas affected by the disease for business purposes. Employers may also consider requesting that employees inform them if they are traveling for personal reasons so the employer is aware of employees who are going to those areas and are exposed to the disease. Employees who travel to China or other impacted areas need to be informed that they may be quarantined upon their return. Employees should also be informed that there may not be adequate medical services available if they travel to impacted areas and become ill.



FMLA and employee leave requirements

If an employee, or an employee's family member, contracts COVID-19, the employee may be entitled to time off from work under federal or state leave laws. For example, an employee who is experiencing a serious health condition or who requires time to care for a family member with such a condition may be entitled to take leave under the Family and Medical Leave Act (FMLA). An illness like COVID-19 may qualify as a serious health condition under the FMLA if it involves inpatient care or continuing treatment by a health care provider. Employees may also be entitled to FMLA leave when taking time off for medical examinations to determine whether a serious health condition exists.

FMLA and employee leave requirements

Some employees may wish to stay home from work out of fear of becoming ill. Whether employers must accommodate these requests will depend on whether there is evidence that the employee may be at risk of contracting the disease. A refusal to work may violate an employer's attendance policy. However, if there is no reasonable basis to believe that the employee will be exposed to the illness at work, the employee may not have to be paid for any time that is missed.

Compensation and benefits

If employees miss work due to COVID-19, they may have to be compensated for their time off. It will depend on the circumstances. Employees may be entitled to paid time off under certain state laws if they (or a family member) contract the illness.

Workers' Compensation for employees who contract coronavirus

You may need to pay if the employees contracted the disease in the course of their employment. Does the employees' work require them to be exposed to persons who are infected? Typically, health care workers fall into this category. If an employee incidentally contracts the disease from a co-worker, there likely will be no workers' compensation liability. If there is workers' compensation liability, employers are responsible for covering the costs of reasonable and necessary medical care, temporary total disability benefits, and permanent disability (if any). Employers should engage a competent medical professional on infectious diseases for advice to determine whether the disease is work-related.



Employee disability benefits

Employee disability benefits need to be paid if they contract the coronavirus and if such payments are provided in an employer's benefit plan. Employers should review the limits of coverage in the benefit plan to ensure they have competent medical resources to administer the program.



ADA Impact

The ADA protects employees with disabilities, but during a global health emergency, as recently declared by the World Health Organization (WHO), employees can be required to be medically examined to determine if they have contracted the disease when an employer has a reasonable belief that employees will pose a direct threat due to a medical condition. WHO raised its risk assessment of the coronavirus to its highest level on Feb. 28, according to CNBC.

ADA Impact

The Equal Employment Opportunity Commission has issued guidance to distribute to the workforce in the event of global health emergency. In the guidance, it states, "if the CDC or state or local public health authorities determine that the illness is like seasonal influenza or the 2009 spring/summer H1N1 influenza, it would not pose a direct threat or justify disability-related inquiries and medical examinations. By contrast, if the CDC or state or local health authorities determine that pandemic influenza is significantly more severe, it could pose a direct threat. The assessment by the CDC or public health authorities would provide the objective evidence needed for a disability-related inquiry or medical examination."



ADA Impact

The ADA protects qualified employees with disabilities from discrimination. A disability may be a chronic physical condition, such as difficulty breathing. Employees may be entitled to an "accommodation" such as leave or be allowed to work remotely for a limited period. Employees who have contracted the virus must be treated the same as noninfected employees, as long as the infected employees can perform their essential job functions. If the employee poses a health or safety threat to the workforce, the employer may place the employee on leave.



Maintain confidentiality if an employee contracts the coronavirus

Employers should inform fellow employees of their possible exposure risk but should maintain confidentiality as required by the ADA.

Employers should refer potentially-exposed employees to CDC guidance on how to conduct an exposure risk assessment.

OSHA Guidance

OSHA has issued a fact sheet regarding protecting workers in the case of a global health emergency. Employers should train employees on the following:

- Differences between seasonal epidemics and worldwide pandemic disease outbreaks.
- Which job activities may put them at risk for exposure to sources of infection.
- What options may be available for working remotely, or how to utilize an employer's flexible leave policy when employees are sick.



OSHA Guidance

- Social distancing strategies, including avoiding close physical contact (e.g., shaking hands) and large gatherings of people.
- Good hygiene and appropriate disinfection procedures.
- What personal protective equipment is available, and how to wear, use, clean and store it properly.
- What medical services (e.g., post-exposure medication) may be available to them.
- How supervisors will provide updated pandemic-related communications, and where employees should direct their questions.



OSHA Guidance

OSHA could cite an employer for exposing the workforce to coronavirus without protective measures. OSHA regulates safety hazards through its "general duty" clause that applies to "recognized hazards" in the workplace. OSHA will look to the CDC as the authority when issuing such citations. The agency will determine whether the employer's industry knows that exposure to infected individuals in the workplace is a hazard. If so, the agency would expect the employer to take feasible measures to protect the employees and, if it not does not take such action, the employer could be subject to citation. Employers should conduct a hazard assessment for potential exposures and develop an action plan that includes hazard identification, hazard prevention procedures, employee training, medical monitoring surveillance and recordkeeping.

Pay for employees who go on leave during a quarantine period or have contracted coronavirus

The employee may be required to be paid if the employee is subject to a contract or collective bargaining agreement that requires pay when employees go on work-required leave.

Quarantining employees who have traveled to countries near China, or who may have traveled with individuals from China

Employers should consult the CDC and WHO for the most up-to-date information on quarantining employees from countries in close proximity to China, such as India or Japan. For those who may have traveled on a plane or other carrier with individuals with exposure to China or the virus, employers should consider having such employees screened by a health care provider before allowing them back to work.

How long can the coronavirus live outside the human body?

It can vary. Similar viruses can live for a few hours, depending on the hardness of the surface the virus is on, as well as ambient air conditions. The harder the surface, the longer the virus can survive.



There are obligations to notify or negotiate with a union regarding coronavirus policies, including leave due to quarantine

It depends on the terms of any collective bargaining agreement. There may be an obligation to negotiate with a union regarding the quarantine policies because they affect the terms and conditions of employment, which include wages and hours at work. Depending on the management rights clause in the contract, an employer may be able to send the employee home but may still have to pay the employee based on the union rights clause.

Workforce protection

As an employer, you have a duty to reasonably protect your workforce as best you can. The legal profession is grappling with the issue of employer rights versus employee rights.

If an employee has recently returned from an impacted area specified by the CDC, you may want to keep the employee out of work for 14 days and allow them to return only with a written return to work OK that they are not infectious from a health care provider.



Accommodations for employees in public-facing positions

There may be an obligation to accommodate employees who do not want to work in public-facing positions due to risk of infection if there is some objective evidence that they could potentially be exposed to individuals who may have returned from China or other impacted area. Employees should not be disciplined for refusing to work if they believe that there is a risk of infection because making such a complaint may be a protected activity. If the employer can establish that there is no basis for any exposure to the disease, the employee does not have to be paid during the time period the employee refuses to work.



Infectious-disease management plans

The U.S. Centers for Disease Control and Prevention (CDC) has issued travel notices advising that precautions be taken when traveling to Hong Kong, Iran and Italy, as the number of cases of coronavirus has spiked in these countries. Precautions include cleaning hands often by washing them with soap and water for at least 20 seconds, and covering the mouth and nose with a tissue or sleeve—not hands—when coughing or sneezing. The CDC also issued travel precautions for Japan and South Korea, including postponing nonessential travel for older adults and those with chronic medical conditions.



Infectious-disease management plans

Such advice goes only so far, however. While employers can take commonsense steps to prevent the spread of the virus, such as issuing travel restrictions, or more controversial steps such as telling people to stay away from work during the 14-day incubation period if they are returning from regions with high infection rates, they might not be enough to prevent the spread of the disease. Employers in the U.S. should review their infectious-disease management plans. If they don't have these plans, now is the time to create them.

Infectious-disease management plans

Well over 3,000 people have died from the coronavirus, mostly in mainland China, and more than 79,350 have been infected, according to CNN.

CNN reported that the virus had spread to 32 countries and territories outside mainland China.



Infectious-disease management plans

Most organizations do not have infectious-disease management plans.

Employers not only have to deal with the current outbreak, but they also must prepare for the virus to recur next year. If the coronavirus is not controlled soon, it could materialize stronger and faster next winter.

Companies need emergency teams headed by a coronavirus coordinator and a cross-functional team that includes HR, legal and information technology.



Infectious-disease management plans

An effective pandemic plan addresses such topics as:

- Workplace safety precautions.
- Employee travel restrictions.
- Provisions for stranded travelers unable to return home.
- Mandatory medical check-ups, vaccinations or medication.
- Mandatory reporting of exposure, such as employees reporting to employers and employers reporting to public health authorities.
- Employee quarantine or isolation.
- Facility shutdowns.



Infectious-disease management plans

Plans should detail how to communicate with employees about staying away from work when they are sick and telecommuting if necessary.

Consider other forms of social distancing that can help prevent the spread of the virus.

Giving a sense of calm is important if there is an outbreak. Employees should feel like they're in good hands with management and that managers are concerned about them.



Infectious-disease management plans

Employers should check the CDC website every day to track the coronavirus.

The World Health Organization is reaching out to employers, asking them to educate their workers.

Communicating with employees

As part of their efforts to prevent the spread of COVID-19 in the workplace, employers should consider communicating information about the illness to employees. The CDC, WHO and OSHA have all created informational material on the virus and its symptoms, prevention and treatment that can be helpful for employees.



Communicating with employees

We recommend that employers issue COVID-19 information to employees only from one of these websites. The download available with this webinar is a great sample communication. You should avoid any communication that places you, as the employer, in the position of being the source of the information.





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