

## Updates

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Coronavirus (COVID-19) and the Workplace: Practical Considerations and Tips for US Employers



Employers are rightfully concerned about what, if anything, they should be doing to respond to the continued spread of the coronavirus (COVID-19), with [confirmed cases in dozens of countries](#), including the United States. As U.S. officials encourage Americans and American companies to prepare for significant disruptions to their daily routines, employers will need to keep in mind the current state of applicable employment laws when deciding how to respond.

### **Intersection Between Coronavirus and Employment Laws**

How companies respond to the coronavirus outbreak may implicate several areas of employment law, including occupational health and safety regulations, anti-discrimination laws, immigration regulations, employee leave laws, and employee privacy considerations.

**Health and Safety Considerations.** Employers have a duty under the U.S. Occupational Safety and Health Act (OSHA) to maintain a safe work environment "free from recognized hazards likely to cause death or serious physical harm." This duty includes taking proactive steps to limit employees' risk of exposure to unsafe conditions and recognized hazards. As with any infectious outbreak, employers are wise to consider temporarily restricting travel to affected areas, permitting work from home when employees are ill, and educating employees on general best practices related to avoiding contamination with the virus. In connection with this, employers should revisit policies involving employee travel, leave, and work arrangements, as well as policies governing the use of personal protective equipment, such as face masks and gloves, and encouraging good hygiene practices. OSHA has developed a [webpage](#) identifying potentially applicable OSHA standards and general precautions that may be applicable to selected employers.

**Discrimination and Leave Considerations.** To promote a safe workplace in the face of an outbreak like coronavirus, employers must be careful not to run afoul of applicable anti-discrimination laws. Specifically, employers must not discriminate based upon protected classes—most prominently in the case of coronavirus are those related to an employee's race, color, or country of national origin. Federal, state, and local anti-discrimination laws also protect employees who are disabled or "perceived as" disabled because they exhibit symptoms of the virus. The Americans with Disabilities Act and similar state laws prohibit employers from requiring medical examinations unless an employee poses a "direct threat" (or the exam is otherwise job-related and consistent with business necessity). This standard is high and may be difficult for employers to meet given screening and quarantine precautions taken for entry into the United States from infected areas. Complicating these discrimination concerns is the fact that federal, state, and local leave laws—including the Family and Medical Leave Act and local sick leave laws—may also protect employees from discrimination based on or interference with employee time off to care for themselves or family members who may be affected by the virus.

**Employee Privacy Considerations.** While employee safety is critical, employers must also be mindful of employee medical privacy rights, which generally prohibit disclosure of personal health information without proper consent or authorization. Privacy laws also generally restrict an employer's ability to request health data from its employees. Some privacy laws require notification to an employee if there has been an unauthorized access or acquisition of that employee's medical information. In addition, common law defamation or invasion of privacy claims can come into play when an employee is falsely identified as having coronavirus. There are exceptions for certain foreign nationals, such as those whose immediate family members are U.S. citizens or lawful permanent residents.

**Immigration Considerations.** As has happened with other recent global health emergencies, governments in many jurisdictions are taking measures in order to contain the spread of the virus that could affect employees. The United States has issued Level 3 travel advisories for China and South Korea, recommending travelers avoid all nonessential travel to these locations, with lower level advisories for three other countries: Iran, Italy, and Japan. The United States has also implemented border controls, effective February 2, 2020, prohibiting entry of all foreign nationals who have been in China within 14 days of their attempted entry date. There are exceptions for certain foreign nationals, such as those whose immediate family members are U.S. citizens or lawful permanent residents.

## **Practical Steps Employers Can Take**

There are some practical steps that employers can take in preparation for the outbreak's potential impact. As with any outbreak, employers will need to be nimble in their approach as circumstances change.

**Encourage Healthy Hygiene Practices.** The World Health Organization has published advice for the public regarding basic preventive measures individuals can take to help prevent the spread of the disease. Employers can share tips for prevention with employees, including encouraging employees to do the following:

- Wash their hands often with soap and water, or use an alcohol-based hand sanitizer if soap and water are unavailable
- Avoid touching their eyes, nose, and mouth with unwashed hands
- Avoid close contact with people who are sick
- Stay home when feeling sick

- Cover coughs or sneezes with a tissue, then throw the tissue in the trash
- Clean and disinfect frequently touched objects and surfaces

**Facilitate a Clean Workplace.** To encourage employee cleanliness, employers might consider adding additional wash stations to the workplace to make washing hands not only easy but visible to others. Disseminating disinfectant and personal hand sanitizer is another effective way to facilitate cleanliness.

**Establish a Written Plan.** Employers may want to consider developing an infectious disease protocol, compliant with OSHA and health and safety laws and regulations, if not already included in a written safety or emergency action plan. The plan should address such issues as the following:

- When an employee may be sent home due to illness and under what circumstances they may return
- When an employee should disclose potential exposure and how such disclosure will be treated
- Whether and when employers may want employees to use personal protective equipment, such as face masks or gloves, and how that will be implemented in the workplace
- What leave benefits are available and restate any required procedures for their use
- How the employer will maintain the employee's privacy
- Who is the designated point of contact regarding the plan

**Limit International Travel.** Employers should check the CDC's website regularly to ensure they have the latest on travel restrictions and recommendations about best practices for avoiding transmission. At present, the U.S. Centers for Disease Control and Prevention recommends limiting all nonessential travel to both China and South Korea, however, this list is likely to expand. Employers should consider following this recommendation by limiting nonessential business travel to affected areas or areas of increased exposure risk. To the extent travel to these areas is mission-critical, employers will need to set up proper protocol for requisite travel.

**Reporting and Restrictions After Travel or Exposure.** Employers can consider requiring employees to report any travel to impacted areas or exposure to coronavirus, and asking employees returning from areas of significant exposure risk and employees who have had contact with a contagious person to refrain from coming into the workplace for a period of time (such as 14 days) to protect employees in the workplace from potential exposure. Permitting employees to work from home during this time period in jobs where that is feasible reduces the impact on employees and risk of restricting employees from the workplace.

**Coordinate Communication on the Topic.** To streamline and organize communications, employers may also consider setting up an internal webpage to communicate with employees on issues related to coronavirus. This would allow for consistency in messaging and, equally beneficial, provide assurance to employees that their companies are taking the risk seriously and addressing it proactively. A hotline number may also be helpful to congregate questions on the topic.

**Consider Allowing—But Closely Manage—Remote Work Options.** Employers may choose to reduce their employees' potential risk of exposure by allowing for flexible work arrangements, including telecommuting where appropriate. However, employers should be mindful of the precedent this could set for work-from-home requests and any future requests for accommodation in the form of remote work. Employers should be sure to balance the risks and benefits before deciding whether to adopt such a policy. Companies' risk assessment may shift as more cases are reported in the United States. At this point, requiring that employees exhaust PTO before permitting remote work may be one way to manage suspected abuse of remote work requests. To the extent permitted by law, managers should retain the right to deny such PTO requests based on business need. Again, this approach will need to be revisited to the extent there is greater spread within the United States. A more relaxed approach, for instance, may be required in the event of mass school and other closures. In addition, for companies with multiple offices, a tailored approach may be necessary for offices where the virus has spread.

**Remind Employees That Discrimination Is Prohibited.** Because of the public health concerns and devastating impact of coronavirus, human nature is to disassociate with anything—or anyone—connected to the virus. Because of this, it is critical to remind employees that discrimination on the basis of race, national origin, color, and disability (or perceived disability) is strictly prohibited and will not be accepted. Employers should, at a minimum, consider redistributing relevant portions of anti-discrimination policies to managers. Companies would also be well served by training managers on how to respond, at the very least, to assumption-based comments about the virus and employees from countries most heavily impacted.

**Review and Potentially Revise Policies.** Employers should review and consider reviewing employee handbook and other policies that may come into play when responding to employee leaves because of coronavirus. For instance, policies covering absence due to illness or job abandonment based on absence should be reviewed for possible modification.

## Takeaways

While there are many practical steps employers can take to respond to the potential risks the coronavirus outbreak poses to the work environment, employers are encouraged to seek advice from trusted counsel regarding any significant changes in policy.

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