

# Client Alert **Employment & Labor**

## *The Coronavirus: Best Practices to Mitigate Risks in the Workplace*

As impact of the Coronavirus Disease 2019 (COVID-19) continues to develop, employers and employees are increasingly concerned about the risk of contamination. Employers should consider practical steps to protect their employees, address employee concerns and maintain productivity during potential business disruptions that may result from the spread of this virus.

- **Education and communication are critical:** Employers should circulate the most recent Center for Disease Control and Prevention (“CDC”) [guidance for employers](#), as well as state and local guidance, such as those provided by [New Jersey](#) and [New York City](#). Review for updates from federal, state and local levels as there will be daily developments and updates. Provide significant updates to employees on a regular basis. We recommend providing these materials via several methods, such as email, postings in breakrooms, on the company intranet, and hard copies inserted with weekly payroll. Ongoing regular communication with employees will create confidence that the business is taking their continued health seriously and help to avoid panic.
- **Encourage sick employees to stay home:** When an employee calls in sick, particularly where the symptoms are associated with COVID-19, employers should err on the side of caution and encourage those employees to stay home. New York City and New Jersey both require employers to provide paid sick leave, which includes time off for employees to care for themselves, care for family members, and for time off related to school closures and the like, which eligible employees may need to utilize. Employers should consult leave laws and policies that apply to the company. Moreover, employers should not require a healthcare provider’s note for employees who are sick with respiratory illnesses to validate their illness or to return to work. Relaxing such requirements is important given concerns about containing further spread of the virus and the potential inundation of healthcare providers who may have increasingly limited resources.

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- **Allow for telecommuting/teleconferencing:** Employers should not place emphasis on in-person attendance, and should evaluate telecommuting options. This may require employers to temporarily relax current telecommuting policies, or to take steps to set up a method for telecommuting.
- **Review policies regarding travel and off-site events:** Employers should review travel and off-site meeting needs and consider making in-person attendance voluntary. If an employee voluntarily decides to attend off-site events, we recommend that employers require the employee to sign a short assumption of risk and waiver of liability. If an employee declines to attend given concerns of the virus, employers should not treat such conduct as insubordination and should consider work around arrangements. Teleconferencing may provide another means for employees to attend off-site functions. The CDC [guidance](#) recommends travelers stay home for 14 days from the time the person leaves an area with widespread, ongoing community spread. We recommend employers adopt similar policies as applied to employees returning from business or personal travel.
- **Encourage healthy practices:** Encourage employees to engage in healthy practices, such as regularly washing and/or disinfecting their hands. To the extent an employer is able to secure these items, they should make disinfectants and hand sanitizers available to employees, especially upon entry to the work place. Employers also should arrange for periodic industrial cleaning and notify employees of those efforts.
- **Identify areas of risk:** Identify health risks specific to each work site, and a plan to address concerns. Review [CDC](#) and the [Occupational Safety and Health Administration](#)'s guidance providing safety tips and highlighting potential areas of risk.
- **Avoid stereotyping:** Employers should not make determinations of risk or treat employees differently based on race or country of origin.
- **Maintain confidentiality:** If/when an employee is suspected or has been confirmed to have contracted the virus, employers should act to maintain confidentiality around the employee's diagnosis. In addition, employers should refrain from asking employees questions about their symptoms and medical conditions or suspected conditions.
- **Training:** Train managers on how to handle concerns and preventative steps that the company is taking to manage the potential spread of the virus. Remind managers of current policies and any changes that the business has decided to make to accommodate employees and business needs during this time. Encourage managers to promptly address all leave requests and meet with team members regarding concerns to engage in a dialogue to move forward in a way that benefits both the employee and the company. It may be prudent to appoint a single department or point of contact for COVID-19 questions or concerns that managers need to further discuss.

- **Evaluate other long term considerations such as:**
  - Create a plan that involves how to prepare for a pandemic, including how to deal with office closures to avoid business disruption. The CDC encourages employers to plan for a possible coronavirus outbreak and advises employers to ensure that their plan is flexible and well communicated to employees. A formal plan may help the employer to focus on necessary steps to prepare and ensure a single message regarding preparedness is communicated to employees.
  - Recognize that there may be legal rights associated with an employee who has the virus or who is perceived to have the virus under federal, state and local disability and leave laws.
  - If employees are represented by a union, consider whether there are any issues that need to be addressed with the employees' bargaining representative and whether there are any provisions in the company's collective bargaining agreements that may be affected.

Importantly, employers should keep in mind that the U.S. is early in the process of understanding and combating COVID-19. The situation is rapidly evolving and employers will need to pay close attention to daily developments. When in doubt, reliance on the guidance provided by health experts, government agencies, and counsel will best insulate employers from exposure to liability for discrimination, privacy or other legal claims from employees.

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Attorneys in our Employment and Labor Law Practice Group can assist employers regarding the issues raised in this alert.

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