

## Employment Law *Trending Now*

# ‘Treating’ the Coronavirus Outbreak in the Workplace

**O**n March 11, 2020, the World Health Organization declared the coronavirus (also known as COVID-19) a pandemic. Just a few days earlier, Illinois Gov. J.B. Pritzker issued a disaster proclamation as new cases of the coronavirus were uncovered in the state. Illinois is one of 13 states across the country that has issued an emergency procedure in response to COVID-19.

As the outbreak continues to evolve, employers may be wondering what they can or should do to protect and manage their workplace in compliance with all relevant employment laws. This alert is intended to address some of those questions and concerns.

### 1. Minimize the Risk of the Spread of the Virus in the Workplace

Under the Occupational Safety and Health Act of 1970 (“OSHA”), employers have a legal obligation to provide employees with a workplace free from recognized hazards likely to cause death or serious physical harm. Those hazards could include the coronavirus.

In that regard, it is imperative for employers to consult, comply with, and distribute safety guidelines to employees, such as the ones issued by the [Centers for Disease Control and Prevention](#) (CDC) and [OSHA](#).

Employers should also consider taking the following steps to help minimize the risk of exposure to the coronavirus in the workplace:

- a) Stay apprised of guidance from federal, state and local health agencies with respect to the COVID-19 outbreak;

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- b) Confirm that environmental cleaning, such as the disinfection of routinely and frequently touched surfaces in the workplace (countertops, workstations, doorknobs, etc.) is performed on a regular basis and inform employees of such measures;
- c) Provide disposable disinfecting wipes to employees, so that commonly used surfaces can be wiped down by employees before each use;
- d) Encourage employees to wash their hands regularly, to cover their coughs and sneezes with tissues, and to refrain from touching their eyes, nose or mouth with unwashed hands;
- e) Require employees to stay home while sick;
- f) Request that employees provide notice whenever they or their family members are sick, so that a risk assessment of potential exposure in the workplace can be performed;
- g) Avoid communal gatherings until such time as the outbreak is contained;
- h) Prepare a detailed emergency response plan, which contains a proposed response to the outbreak in the event that an employee is exposed to the virus (including identification and isolation of infected individuals); and
- i) Consider implementing/reviewing any work-from-home policies, in the event that employees are required to self-quarantine or otherwise work from home as a result of the outbreak.

## **2. In the Event of a Workplace Closure, Track All Hours Worked Remotely By Employees, Particularly Non-Exempt Employees**

Employers may eventually find it necessary to close a physical worksite to prevent the spread of the coronavirus in the workplace. If that occurs, employers should ensure that they have a sufficient system to track any hours worked remotely by both exempt and non-exempt employees.

With respect to exempt employees, employers must generally continue to pay those employees on a salary basis regardless of the number of hours worked during a worksite closure. An exception to this rule exists where a worksite is closed for greater than a workweek and absolutely no work is performed by the exempt employee during that period.

Non-exempt employees may be treated differently than exempt employees. As a general matter, an employer is only required to pay non-exempt employees for the hours they spend actually working. Therefore, if non-exempt employees do not perform any work during a worksite closure, employers are not required to pay them. If non-exempt employees are unable to work during a worksite closure, employers should permit them to use any and all available sick, vacation or personal leave and, if no such leave is available, the employer may want to consider frontloading additional paid time off to minimize the impact of a closure.

## **3. Avoid Claims for Discrimination and Violation of Privacy Rights**

Employers may require employees who appear to be displaying cold or flu-like symptoms, similar to those seen in coronavirus patients, to go home for the day or to seek medical attention. In doing so,

employers are cautioned to refrain from: (a) asking questions that seek information regarding an employee's medical history, as such inquiries may violate the Americans with Disabilities Act (ADA), among other applicable laws; and (b) sharing information about the specific employee's condition with other employees who are not in a position to be privy to such information. As to the latter point, employers should advise employees if they have been exposed to the coronavirus, but they should not disclose the source of the virus.

Employers are not obligated to report potential coronavirus cases to media outlets or to any local, state or federal health agencies. If an employer is contacted by a state health agency or media outlet for information about a coronavirus case, the employer should be cautious as to the information shared, keeping in mind the privacy rights of all affected employees.

Further, when implementing policies to safeguard the workplace against the coronavirus, employers should confirm that their policies do not discriminate against employees of a protected class. For instance, employees who are from countries that have experienced widespread cases of coronavirus, such as China, Italy, South Korea and Iran, should not be treated any differently than other employees because of their national, racial or ethnic origin.

Employers that are notified of alleged discriminatory conduct, harassment or abuse as a result of an employee's protected class should ensure such claims are thoroughly investigated and promptly addressed.

#### **4. Consider Limiting Business Travel and Request Employees to Disclose Plans to Travel to Foreign Countries**

Employers should routinely check the [CDC's Traveler Health Notices](#) to determine whether to limit business travel to any particular country. At this time, most travel to Europe has been restricted until sometime in April and the CDC has advised against all non-essential travel to China, South Korea and Iran. Employers should also consider employees' requests to reconsider business travel, in light of the ongoing spread of the coronavirus.

Employers may be wondering whether they can prohibit employees from traveling to particular countries, especially those that are high-risk. While employers cannot prohibit employees from voluntarily traveling to any particular destination, they can implement policies requiring employees to: (a) disclose their travel plans; and (b) self-quarantine upon return from travel abroad. The CDC currently recommends that any U.S. citizen who has traveled to a high risk country self-quarantine for 14 days after returning to the United States.

*If you have any questions about this Alert, or if you would like assistance with preparing or implementing policies to protect and manage your workplace in light of the COVID-19, please contact an attorney listed on Page One of this Alert or the Aronberg Goldgehn attorney with whom you work.*