



## ALERTS

### Coronavirus And COVID-19 Updates For Employers

March 3, 2020

Multiple states have reported cases of COVID-19, a disease caused by the novel coronavirus. Although the CDC is still reporting that the *immediate* health risk from COVID-19 is considered low in the United States, the virus is likely to spread, and certain populations are identified as vulnerable:

- Communities where ongoing community spread of novel coronavirus, the virus that causes COVID-19, are at elevated risk, though still relatively low risk of exposure
- Healthcare workers caring for patients with COVID-19 are at elevated risk
- Close contacts of persons with COVID-19 are at elevated risk
- Travelers returning from affected international locations where community spread is occurring are at elevated risk

The CDC is currently recommending travelers avoid all nonessential travel to:

- China
- Iran
- South Korea
- Italy

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- Japan (for those with chronic medical conditions)

The list of countries is dynamic and will likely be modified as conditions change. As employers evaluate how to manage the possible implications of coronavirus in their workplaces, here are the following recommendations to consider:

## 1. Consider Limiting Travel

Employers should strongly encourage their workers to avoid all nonessential travel to areas where the coronavirus outbreaks are high, as the CDC has recommended. Employers with business involving travel to those areas should consider reasonable alternatives for their workers, such as videoconferencing. As more countries continue reporting cases of COVID-19, employers should recognize that assessments of elevated travel risks must remain dynamic.

Further, if an employee is currently traveling abroad in an affected area, employers should work with legal counsel to determine a viable strategy for the employee's return to the U.S. given current U.S. travel restrictions, the cancellation of many international flights, and the unavailability of visa appointments in many places for foreign nationals. Other countries have enacted various travel restrictions to protect their populations, and the situation continues to evolve.

## 2. Engage in Open Communication

Employers should also inform workers that management is aware of and closely monitoring the coronavirus outbreak, particularly with respect to company travel to and from affected regions. If some workers have recently had overseas exposure in a known affected area, employers may generally inquire as to where the workers traveled or whether there was any potential exposure to a contagious illness during their travel.

## 3. Reinforce Sick Leave and/or Remote Working Policies

According to the CDC, a person may develop symptoms of the COVID-19 virus within 14 days of exposure. If workers show up feeling sick with an acute respiratory illness symptoms, such as a fever, a cough, or difficulty breathing, encourage employees to use paid leave, vacation, sick time, or other leave that might be available and return to work only once the symptoms disappear and/or they obtain a return-to-work notice from their physician. Employers may need to evaluate the application of their attendance policies for such absences.

If a worker refuses to stay at home or if the medical professional determines that a worker has contracted COVID-19, employers may consider implementing remote working policies or requiring the worker to stay home from work until cleared by a medical professional to return to work.

The bottom line is that workers who have returned from affected areas overseas within the past 14 days who display symptoms of coronavirus should be encouraged to stay at home for a limited time period in accordance with the CDC guidance.

Keep in mind there are a number of employment related laws, such as

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the ADA and FMLA, that are potentially impacted when requiring employees to stay at home, when discussing employees who may develop symptoms, or if medical examinations are involved. Obviously, the organization will need to comply with its legal obligations under related federal and state employment laws. The [EEOC had previously issued guidance](#) on pandemic preparedness in the workplace and ADA considerations. The CDC has also [issued interim guidance for businesses](#).

#### 4. Employers With a Collective Bargaining Agreement

Our recommendations do not change for employers with unionized workforces. However, given the myriad of leave provisions in collective bargaining agreements (for example, sick leave, vacation time, paid-time off PTO, and FMLA), unionized employers must review their applicable collective bargaining agreements to ensure any steps taken comply those agreements particularly with respect to mandating absences from work. Although an appropriate dialogue with the employees' union representative may assist in efforts to ensure employee cooperation, the management rights' clause should also be carefully reviewed for the ability to engage in unilateral action, particularly in light of recent NLRB decisions giving a broader interpretation of such clauses.

#### 5. Educate Workers

The organization should train employees on proper steps to limit the potential spread of any virus, including COVID-19. The CDC recommends the following to prevent the spread of the virus:

1. Wash hands often with soap and water for at least 20 seconds, and if soap and water are not available, use an alcohol-based hand sanitizer
2. Avoid touching eyes, nose, and mouth with unwashed hands
3. Avoid close contact with people who are sick
4. Stay home when sick
5. Cover coughs or sneezes with tissues or cough into the elbow area, then discard the tissues in the trash and follow up with handwashing
6. Clean and disinfect frequently touched objects and surfaces regularly

As there is no present vaccine to prevent COVID-19, circulating these good hygiene practices to workers is the next best step for employers to stay proactive during the coronavirus outbreak.

#### 6. Cooperation with Health Officials

In the event of exposure in the workplace (or concern about exposure), federal, state, and/or local health agencies will interact with an affected employer. Of course, it is important to comply with reasonable requests from government agencies with jurisdiction, otherwise keeping employee private health information confidential.

For more information, please contact the Barnes & Thornburg attorney



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