



Is Your Business Ready to Deal with the Coronavirus?

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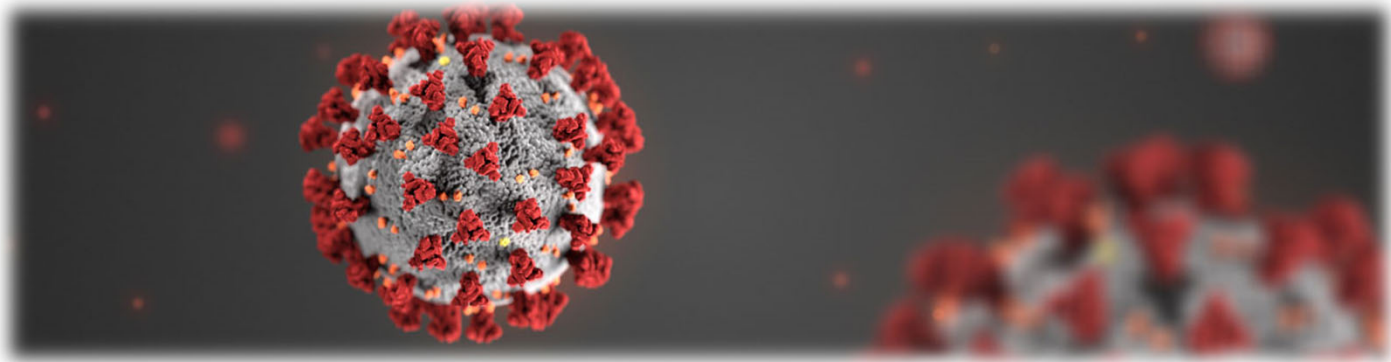
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What is COVID-19?

- Coronavirus disease 2019 (COVID-19)
- Symptoms:
 - 90% fever
 - 70% dry cough
 - 30% trouble breathing
- Spreading from person-to-person

Global Outlook COVID-19

- WHO declared Coronavirus a public health emergency of international concern on January 30, 2020
- WHO's risk assessment at the global level is very high
- Not currently classified as a pandemic, but stay tuned



What are Pandemics and Epidemics?

Pandemic:

- A disease affecting the majority of the population of a large region
- A disease that is epidemic at the same time in many different parts of the world
- A global disease outbreak

Epidemic:

- Appearance of an infectious disease or condition that attacks many people at the same time in the same geographic area

Coronavirus (COVID-19)

- First identified in Wuhan, China in December 2019
- Wuhan is the seventh largest city in China and has a population of more than 11 million
- As of March 5, 2020, more than 80,000 cases have been diagnosed in China and apparently 3,000 people have died – a mortality rate of 3%
- The confirmed cases have spread to an additional 80 countries infecting more than 12,000 people and more than 200 deaths
- There have been more than 200 confirmed cases in 20 states in the U.S. and 14 people have died.

Coronavirus (COVID-19)

- There is some uncertainty surrounding the effectiveness of virus testing methods and the length of the incubation period
- Hospitals in Wuhan and elsewhere in Hubei province have been overwhelmed, so some infected people may have been unable to see a doctor for diagnosis
- China generally has a good health system, but there is concern that the virus will spread to other countries with health systems incapable of handling the epidemic
- A million Chinese are estimated to be working in Africa alone

Coronavirus (COVID-19)

- A flu-like disease such as Coronavirus is difficult to contain
- A major goal is to slow its worldwide spread until a vaccine can be developed – which could take a year or more
- Travel restrictions may slow Coronavirus from spreading
- CDC has issued travel guidances: **Level 3** – China, South Korea, Iran and Italy; **Level 2** – Japan; **Level 1** – Hong Kong

Coronavirus (COVID-19)

Reports at this stage show the following patterns:

- 80% of cases are mild
- Approximately 15% of cases require hospitalization
- Roughly 3–5% will need intensive care
- 3% of cases are fatal

WHO officials have said Coronavirus is much deadlier than seasonal flu but may not spread as easily.

Coronavirus (COVID-19)

- Much remains unknown how the Coronavirus spreads
- Based on similar past viruses, it is believed that Coronavirus is spread from person-to-person among those in close contact (about 6 feet)
- Person-to-person spread is thought to mainly occur via respiratory droplets produced when an infected person coughs or sneezes
- The CDC believes that symptoms may appear in as few as 2 days or as long as 14 days after exposure
- Symptoms of Coronavirus can include fever, cough and shortness of breath

Coronavirus (COVID-19)

CDC's recommendations of everyday preventive actions to help prevent the spread of respiratory viruses, including Coronavirus:

- Wash your hands often with soap and water for at least 20 seconds (especially after going to the bathroom), before eating, and after blowing your nose, coughing or sneezing
- If soap and water are not available, use an alcohol-based hand sanitizer with at least 60% alcohol
- Avoid touching your eyes, nose and mouth with unwashed hands
- Avoid close contact with people who are sick
- Stay home when you are sick

Workplace Mitigation Measures

- Sick employees stay home
- Employees with sick family member stay home
- Send symptomatic employees home
- Encourage respiratory etiquette
- Encourage good hand hygiene
- Increased cleaning of common surfaces
- Encourage calls to health-care providers

What should your company be doing?



(1) Have a business continuity plan to account for a pandemic

(2) Identify critical functions and employees who can support them

(3) Assess your ability to support telework/staggered shifts

What should your company be doing?

- (4) Create HR policies to be used during a pandemic
- (5) Evaluate your ability to access your facility during a pandemic
- (6) Consider alternative work facilities

What should your company be doing?

- (7) Identify critical suppliers and their readiness to support during a pandemic
- (8) Identify key governmental partners
- (9) Have a succession and crisis response plan
- (10) Educate employees

Forming Infectious Disease Response Team

- Consider team members and responsibilities
- Establish an employee communication plan
- Develop protocol for warning employees
- Revise emergency operations plan



Identifying Essentials

- Who are essential employees?
- What is critical to ensure business can operate?
- Identify critical partners and suppliers
- What are essential technology needs?

Developing Plans to Support Work from Home

- Does company have software or other equipment necessary to enable employees to work from home?
- Explain expectations and obligations as they pertain to working from home
- Evaluate insurance/liability issues
- Evaluate FLSA issues

Identifying Company Policies That Will Be Affected

- Absenteeism
- Sick leave
- Wage payment
- Medical leave/FMLA
- Benefits
- Bereavement

Possible New Company Policies and Procedures

- Shutdown and recovery
- Job training
- Flex time/telecommuting/staggered shifts
- Pay continuation
- Housing or financial assistance

Consider Issuing Pre-Pandemic Survey

ADA-COMPLIANT PRE-PANDEMIC EMPLOYEE SURVEY

Directions: Answer "yes" to the whole question *without specifying the factor that applies to you*. Simply check "yes" or "no" at the **bottom of the page**.

In the event of a pandemic, would you be unable to come to work because of any one of the following reasons:

- If schools or day-care centers were closed, you would need to care for a child;
- If other services were unavailable, you would need to care for other dependents;
- If public transport were sporadic or unavailable, you would be unable to travel to work; and/or;
- If you or a member of your household fall into one of the categories identified by the CDC as being at high risk for serious complications from the pandemic influenza virus, you would be advised by public health authorities not to come to work (e.g., pregnant women; persons with compromised immune systems due to cancer, HIV, history of organ transplant or other medical conditions; persons less than 65 years of age with underlying chronic conditions; or persons over 65).

Answer: YES_____ , NO_____

Discussing Policies with Insurance Carriers

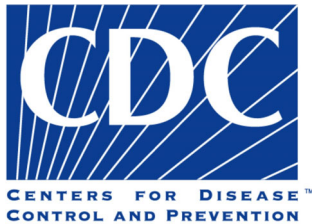
How would a pandemic affect your:

- Health insurance
- Disability insurance
- Life insurance
- Business interruption insurance
- Workers' compensation insurance

Identifying Health Information Presented to Employees

- Are employees educated about the signs of infection?
- Are employees educated about transmission?
- Are employees educated regarding sanitation?
- Are employees educated on company directives?

Medical Information



- Employers generally are not experts on Coronavirus or other illnesses
- Employers can connect employees with appropriate health organizations, government agencies, and other sources of information
- Employers should not provide medical opinions or advice on the spread or effects of Coronavirus
- The CDC has information that employees can access:

<https://www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html>

<https://www.cdc.gov/coronavirus/about/index.html>

Sign up for CDC email updates:

<https://www.cdc.gov/other/emailupdates/index.html>

Workplace Concerns and Company Response

- Employers should convey that they are monitoring the virus outbreak and will take proactive steps as necessary to protect employees' health and the business
- Employers should encourage employees to review company sick leave and other policies and remind them to stay home if not feeling well
- OSHA has identified certain industries in which workers are at a greater risk for infection:
 - Healthcare workers
 - Airline and other travel industry personnel
 - Laboratory workers
 - Border, customs and quarantine workers and
 - Waste management workers

Workplace Concerns and Company Response

- Employers in these industries should promptly review their infectious disease protocol to ensure they are up to date and are disseminated to all workers
- OSHA has published extensive guidelines addressing these industries which can be found at: <https://www.osha.gov/SLTC/covid-19/>

Potential Legal Issues

- Americans With Disabilities Act (ADA)
- Worker Adjustment and Retraining Notification Act (WARN)
- Occupational Safety and Health Act (OSHA)
- Family and Medical Leave Act (FMLA)
- Title VII of the Civil Rights Act of 1964
(discrimination based on race or national origin)

Potential Legal Issues

- Fair Labor Standards Act (FLSA)
- National Labor Relations Act (NLRA) and Railway Labor Act (RLA)
- Workers' Compensation
- Contract Claims
- State and local laws regarding leave, wages, etc.



Legal Issues - ADA

- COVID-19 may be a disability under the ADA Amendments Act
- Sending home sick employees may raise “regarded as” claims
- Persons with compromised immune systems may request to telecommute to protect them from exposure

Legal Issues - ADA

- Employers can require current employees to undergo medical examinations when such examinations are job-related and consistent with medical necessity
- Because the risk of transmission of Coronavirus is still low, requiring a medical examination for all international business travelers likely would not be considered a necessity

Legal Issues - ADA

- Employers may require individuals who take trips to China and other Level 3 countries to work remotely upon their return during the 14-day incubation period
- It should be clear that this policy is limited to the unusual circumstances of potential Coronavirus exposure
- Consider a temporary travel opt-out policy for travelers going to an infected region

Legal Issues – ADA / Title VII

- Active screening of employees may raise privacy issues (must be job-related and consistent with business necessity)
- Requiring medical clearance (from ill or traveling employees) may be discriminatory
- Be careful of potential national origin, race, ethnicity discrimination claims

Legal Issues – WARN Act

- Only an issue with six-month shut down
- Temporary lay-offs or shut downs permitted
- If statute triggered (extreme event), Coronavirus epidemic may be an exception to the 60-day notice requirement

Legal Issues - OSHA

- Requires that employers provide employees with workplace free from “recognized hazards” that cause or are likely to cause death or serious physical harm (general duty clause)
- Tension between OSHA and ADA

Legal Issues - OSHA

- Under OSHA, employees may refuse to work when there is a reasonable belief that there is a risk of imminent death or serious injury
- Retaliation for complaints about workplace safety

Legal Issues – FMLA

- The seasonal flu ordinarily does not qualify
- The Coronavirus may/likely will qualify as “serious health condition”
- Follow standard procedures?

Legal Issues – FMLA

- Fitness-for-duty release complications
- Plan for handling affected employees who are not eligible for FMLA leave

Potential Legal Issues – FLSA

- Changed pay practices due to
 - telework
 - staggered shifts/flex schedules
 - job coverage
- Monitoring/regulation telework
- Impact on exempt/non-exempt status

Potential Legal Issues – FLSA

- Telecommuting recordkeeping and pay issues
- Deductions for voluntary absences (exempt and non-exempt)
- Deductions for involuntary absences (exempt and non-exempt)

Legal Issues – NLRA and RLA

- Union contract policies, such as sick leave, loss of seniority
- Unilateral changes
- If a group of employees refuses to work because of concerns about Coronavirus, the refusal may be considered protected concerted activity
- Hiring replacements

Legal Issues – Workers' Comp

- Possible eligibility if employees contract the flu in the workplace or performing company business
- Possible eligibility if employees injured while working at home
- Check whether your insurer needs to be notified if employee reports a possible case of Coronavirus

Frequently Asked Questions

Question

If employer thinks an employee may be infected, should it advise other employees of possible exposure?

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Answer

Advise coworkers of the exposure generally in a manner that in no way would identify the sick employee.

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Answer

Generally yes. The degree of specificity may depend on updated information from the CDC

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Can employers require employees to come to work, even if they refuse due to fear?

Answer

Yes, if providing a safe workplace (no “imminent danger”), but seek advice if two or more employees refuse

QUESTIONS?

Thank You!

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