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Plan now for coronavirus to avoid disruptions and promote safe practices

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The flow of news on coronavirus (COVID-19) continues unabated, and as cases across the U.S. mount, employers should be prepared for any impact the coronavirus may have on your business. Anticipating employee concerns, focusing on prevention, and implementing proactive procedures through clear-sighted planning will help minimize potential disruptions should the situation worsen.

Duties of employers

In fact, as an employer, you have an affirmative obligation and duty to provide a safe work environment for your employees under the Occupational Safety and Health Act. Under OSHA, you are required to provide a working environment that is free from hazards that are likely to cause serious harm or death. Although you have this obligation, taking it too far and implementing policies and procedures that are overly broad and have the potential to impact employees based on their national origin or disability could expose you to a discrimination lawsuit.

In order to avoid crossing the relatively fine line from a policy or procedure that properly protects your employees and business to one that could expose you to litigation, the policies and procedures put in place must be proportionate to the risk imposed by the coronavirus.

Agencies such as the Center for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and the Equal Employment Opportunity Commission (EEOC) have released guidance for employers to utilize in responding to coronavirus risks in the workplace.

The CDC recommends that employers should take the following steps right now:

1. **Actively encourage sick employees to stay home.** Employees with symptoms of acute respiratory illness are recommended to stay home and not come to work until they are free of fever, signs of fever, and any other symptoms for at least 24 hours.

2. **Separate sick employees.** Employers should separate employees who appear to have acute respiratory illness from other employees and send them home immediately.
3. **Emphasize staying home when sick, respiratory etiquette, and hand hygiene by all employees.** The CDC recommends posters that encourage employees to stay home if they are sick and stress the importance of cough and sneeze etiquette and hand hygiene. Posters should be displayed at the entrance of the workplace and in areas likely to be seen by employees. Employers should provide tissues and no-touch disposal receptacles for use by employees and instruct employees to wash their hands and use hand sanitizer.
4. **Perform routine environmental cleaning. Routinely clean all workspaces, countertops, and doorknobs.** Provide disposable wipes for employees to wipe down areas on their own.
5. **Advise employees before traveling to take certain steps.** Employees should check CDC's Traveler's Health Notices for each country they plan on traveling to and refrain from traveling if they are sick. Employers should make it clear what steps should be taken by employees if they do become sick while traveling.
6. **Additional measures in response to currently occurring sporadic importations of the COVID-19.** Employees who have a sick family member at home with COVID-19 should notify their supervisor and refer to CDC guidance on how to conduct a risk assessment of their exposure. If an employee is confirmed to have COVID-19, employers should inform other employees of their possible exposure but must maintain confidentiality as required by the Americans with Disabilities Act (ADA).

Implement preparedness plan. The CDC recommends that employers begin planning to lower the impact of COVID-19 on their workplace by implementing a preparedness plan that keeps the following objectives in mind (1) reducing transmission among staff, (2) protecting people who are at higher risk for adverse health complications, (3) maintaining business operations, and (4) minimizing adverse effects on other entities in their supply chains.

Some key considerations include:

- Disease severity where you are located
- Impacts on those who are at a higher risk (those with chronic medical conditions)
- Preparation for increased numbers of absences due to illness in employees and their family members, school closings or early dismissals
 - Implement plans to continue essential business functions in case you experience higher than normal absenteeism
 - Cross train personnel to perform essential functions in case key staff members are absent
 - Be prepared to change business practices if needed to maintain critical operations

The EEOC has set out guidance on how to identify which employees are more likely to be unavailable during an outbreak without running into issues with the ADA. The EEOC recommends having a survey that can be given to employees to anticipate absenteeism. The following type of survey is recommended by the EEOC:

Sample Questionnaire

Coronavirus - Work Availability Impact 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 high risk for serious complications from the coronavirus, 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 some other medical conditions; persons less than 65 years of age with underlying chronic conditions; or persons over 65).

Answer: Yes No

Name: _____

OSHA advises that human-to-human contact greatly increases the risk of transmission.

Therefore, the following industries are at an increased risk of exposure:

- Healthcare
- Deathcare
- Laboratories
- Airline operations
- Border protection
- Solid waste and wastewater management
- Travel to areas and countries where the virus is spreading

Action steps to consider now

Many employers are implementing policies now in order to protect against effects from the coronavirus. At a minimum, here is what you should be doing:

- Institute a ban on business travel to China and other areas recognized as coronavirus “hotspots.” Broad-based bans should not be imposed, and all bans should be directly linked to countries that impose a risk.
- Designate a management-level employee to check the CDC website daily in order to track the spread of the virus and to stay on top of recent developments with the coronavirus. This individual should be directly involved with any bans imposed by your business.
- Communicate the steps you are taking to your employees so they are informed of your concern and aware of the precautionary steps the business is taking. Designate an individual for all inquiries related to the coronavirus and actions taken by your business related to the coronavirus. This individual should be equipped with information relating to the coronavirus upon request.
- If an employee has been to a coronavirus “hotspot,” consider making him or her stay home for the full 14-day incubation period. If the employee is unable to work remotely during this time period, consideration should be given to whether you want to pay the employee during this period. You may force the employee to use PTO or stay home without pay for two weeks, but this may cause employees to hide the fact that they have been to an area designated as a hot spot.

Being prepared is the best way to protect your business and employees from effects of the coronavirus. Additional information can be found at the resources below:

- <https://www.osha.gov/SLTC/covid-19/>
- <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>
- https://www.eeoc.gov/facts/pandemic_flu.html

Employers with specific questions about implementing a coronavirus preparedness plan should contact their Quarles & Brady attorney or

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