

# The Coronavirus: Up-To-Date Guidance For Employers

## Labor & Employment Law Alert

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Now that cases of the coronavirus disease (dubbed “COVID-19” by the World Health Organization) have been diagnosed in several states, businesses are increasingly encountering a variety of employment-related issues. Here are some specific steps employers can take and general guidelines employers should keep in mind.

### Review the Public Health Information

Employers should familiarize themselves with the public health information published by the CDC, OSHA, and state and local health departments in their area. These materials provide useful information about the coronavirus, how it can be spread, and preventive measures.

The CDC has published general guidance for businesses; specific guidance for organizations with specialized concerns, such as healthcare facilities and schools; and guidance addressed to specific issues, such as travel to and from areas where the coronavirus has spread widely. The CDC’s various guidance publications can be accessed [here](#).

OSHA has also published guidelines, available [here](#).

The EEOC has issued guidance about the coronavirus, available [here](#), which incorporates the EEOC’s 2009 guidance regarding flu pandemics and also specifically states that the antidiscrimination statutes do not interfere with or prohibit employers from following the recommendations in the CDC’s guidance on the coronavirus.

### Understand an Employer’s Obligations

OSHA’s General Duty Clause requires employers to take reasonable steps to keep the workplace free from recognized health hazards that are likely to cause death or serious physical harm.

Antidiscrimination and employee privacy laws prohibit discriminating against an employee based on an actual or perceived serious medical condition and require employers to keep information about the health conditions of specific employees as confidential as possible. Both the EEOC and the CDC also warn employers against stigmatizing or discriminating against employees based on race or country of origin, or disclosing private health information regarding employees who may contract COVID-19 (see interim guidance).

Laws regarding medical leave, family leave, and sick leave may require that employees be given time off from work based on their own serious medical condition or to care for a family member with a serious medical condition. Some jurisdictions, including New Jersey and New York City, have laws that (i) require an employer to allow an employee to use accrued paid sick leave when a child’s school is closed due to a public health emergency; and (ii) allow employees to use accrued paid sick leave if an employer’s business closes due to a public health emergency.

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## **Practical Steps to Minimize Risk and Protect Employees**

There are many practical steps employers can and should take while honoring all of these obligations.

### *Share Public Health Information with Employees*

Circulate the public health guidance to employees, particularly the CDC's recommendations on precautionary measures, described below. This will not only provide employees with useful information, but also let employees know that their employer is monitoring the situation and taking steps to address it.

### *Take Precautionary Measures*

The CDC's guidance recommends that employers take certain steps, including the following:

- Encouraging employees to wash their hands frequently and to avoid touching their noses, mouths, and eyes.
- Encouraging employees to cover their noses and mouths when coughing or sneezing, preferably by coughing or sneezing into a tissue or the crook of their elbow. Having tissues and hand sanitizer available to employees in the workplace is highly advisable.
- Employees should avoid close contact with co-workers, especially those who have been traveling in areas where the coronavirus is present or who are experiencing flu-like symptoms. Shaking hands should be avoided as well.
- Meetings in close quarters should be limited.
- Work surfaces like telephones and computer equipment should be regularly disinfected. Employees should be discouraged from using another's phone or computer equipment.
- Encouraging employees who are sick to stay home.
- Employers should be flexible about granting leave, even if the leave would not ordinarily be required under the law or the employer's policies. Denying leave may cause employees to feel compelled to come to work even if they are sick or to bring their children to work even if the children may be sick.
- Consider modifications to work arrangements to minimize contact in commuting, work, or social settings. Permit or encourage tele-working where feasible. Consider allowing modified arrival and departure times to reduce interaction with crowds during commuting.

The CDC guidance addresses how to assess the risk when employees have traveled to areas where the coronavirus is widespread or have been exposed to an individual who has tested positive for the coronavirus. Depending on whether the risk is high, medium, or low, the employer may require the employee to take steps ranging from self-isolation to self-monitoring to self-observation. These guidelines can provide answers about how to deal with many different employee situations.

### *Addressing Specific Situations*

Employers should designate an individual or committee to deal with specific situations. The EEOC recommends that employers identify a pandemic coordinator or committee for preparedness and response planning (see pandemic preparedness document). Committee members should understand the potential legal pitfalls of too zealously trying to

protect employees from infection. While employees are to be protected from direct threats to their safety from other employees, the existence of a direct threat must be based, in part, on the severity of the illness. The EEOC has previously determined that the risk of spreading seasonal flu or the 2009 H1N1 virus would not pose a direct threat or justify disability-related inquiries and medical examinations. How the EEOC will view COVID-19 will be determined by state or local public health assessments, which as of now are unclear.

Committee members may also be called upon to determine when and how reasonable accommodations need to be made for employees who have disabilities or medical conditions that may be exacerbated by exposure to COVID-19, such as weakened or suppressed immune systems, who may seek permission to work from home or to limit travel on public transportation. These issues must be carefully considered under the patchwork of laws that may be implicated, including state and federal antidiscrimination laws, state and federal leave laws, and state and federal workplace safety laws.

In situations where answers are not readily apparent from the guidance materials, consult with public health officials or counsel to obtain proper guidance. The professionals at McCarter & English in the Labor and Employment Department would be happy to answer questions with regard to their respective areas of practice. Please feel free to contact any of the partners identified on the side bar or the attorney with whom you normally work.