

## **Employer Concerns When Responding to the Coronavirus**

*By Attorney Rema Ina*

The spread of the COVID-19 Coronavirus around the world is presenting unique situations and unprecedented challenges. Here are some guidelines for employers to best handle these issues with their employees in the work context.

### **Employer Strategies**

First, all employers should be doing their part to prevent the spread of this and other diseases by providing alcohol-based hand sanitizer that contains at least 60-95% alcohol for their employees. Employers should ensure that frequently touched surfaces in the workplace are routinely cleaned and should provide employees disposable wipes.

Further, the Centers for Disease Control and Prevention (“CDC”) recommend employers use the following plans now:

- Place posters that encourage staying home when sick, cough and sneeze etiquette, and hand hygiene at the entrance of your workplace and in other workplace areas where they are likely to be seen.
- Actively encourage sick employees to stay home
- Send sick employees home immediately if they come to work.
- For more information, refer to the CDC website:

<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>

To encourage employees to stay home when they are sick or caring for a sick family member, it is a good idea to review your paid time off and sick leave policies now. Give employees confidence that they will not be penalized and can afford to take sick leave to reduce potential exposure. Starting April 2, 2020, qualifying employees will be entitled to paid leave under the Families First Coronavirus Response Act. Read more about that here: <http://www.gallaghersharp.com/sites/default/files/NF-Families%20First%20Coronavirus%20Response%20Act-Mar%202020%202020.pdf>

Many companies have the capabilities to allow their employees to work remotely. If that is the case in your industry, encourage employees to use that option.

### **The ADA**

The Americans with Disabilities Act (“ADA”) prohibits employers from making disability-related inquiries and requiring medical examinations unless (1) the employer can show that the inquiry or exam is job-related and consistent with business necessity, or (2) the employer has a reasonable belief that the employee poses a “direct threat” to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation.

Ohio Governor Mike DeWine is requiring employers take their employees’ temperatures. You may also ask an employee if they are exhibiting symptoms of COVID-19 such as tiredness, cough and shortness of breath. You should treat the employee’s response as a confidential medical record. You are then permitted to ask the employee to leave work, seek medical attention and get tested for COVID-19.

If an employee is confirmed to have COVID-19, you should inform your employees that they may have been exposed to the disease. However, do not disclose the identity of the infected employee due to confidentiality requirements under federal and state law. Ask the sick employee to identify the individuals who they worked in close proximity within the previous 14 days and you should send these employees home for a 14-day period to ensure that the infection does not spread. You should then ask a cleaning company to conduct a deep cleaning of your affected workspaces.

If an employee self-reports that they have come into contact with someone who has COVID-19, treat that situation as if the employee has the virus and send them home out of an abundance of caution.

If you have a reasonable belief that an employee has travelled to a high-risk country or area and either has acquired COVID-19 or been exposed, you may ask that the employee not return to work for 14 days (per CDC recommendations) or may send the person home.

### **Discrimination Concerns**

Title VII and state law prohibit discrimination based on race, color, national origin, and other protected classifications. The CDC has advised, “To prevent stigma and discrimination in the workplace, use only the guidance described [by the CDC] to determine risk of COVID-19. Do not make determinations of risk based on race or country of origin, and be sure to maintain confidentiality of people with confirmed COVID-19.” CDC, [Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 \(COVID-19\)](#)

Employers should ensure that any policies for travel or work restrictions imposed due to the Coronavirus are imposed impartially to all employees.

If you have any questions about this or other employer concerns during this crisis, do not hesitate to give me a call.

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