COVID-19 Alert: CDC Interim Guidance

Recommended Employer Response to the Coronavirus

March 05, 2020

See more related articles and posts in our: COVID-19 Resource Collection.

The spread of coronavirus (COVID-19), and its effects on business markets, travel, and public health, are dominating the news cycle. As this public health emergency *(and related public anxiety)* continues to develop, it is critical that employers adopt measured policies that promote safe working environments, and that employers identify and execute on strategies to limit business interruptions.

The Centers for Disease Control and Prevention ("CDC") has released an interim guidance for private sector employers that relates to the management of coronavirus concerns. We advise that the CDC's guidance provides employers with a reasoned roadmap for developing coronavirus response strategies. The core themes of the guidance are discussed below:

Promoting Use of Sick Time

The CDC recommends encouraging sick employees to stay home until they are asymptomatic. Employers should also require sick employees who do arrive to work to be sent home.

Now is a great time for employers to review their current sick time policies for compliance with state law. Employers are also recommended to review these policies with their workforce and encourage their use.

Employers may also want to review their policies to be prepared for increased numbers of employees being absent, either for sickness, or to care for family members, including children, in the case of illness or if schools and daycares temporarily shut down.

Cleaning Workspaces and Encouraging Good Hygiene

The CDC recommends performing routine cleaning of the work spaces, including doorknobs, countertops, and workstations. Employers may also wish to provide hand sanitizer and disposable disinfection wipes for employees to use as well.

Employers are also recommended to review hand hygiene and cough and sneeze etiquette with their employees to help minimize the spread of the virus.

Restricting Travel

The CDC also recommends advising employees before traveling of the current guidance and recommendations for each country of travel – and educate them on the symptoms of the coronavirus disease and other respiratory illness before travel.

Many large, global companies have ultimately decided to pause non-essential international travel and are encouraging employees in other countries to work remotely (or are shutting down operations completely in certain affected areas, like China). Additionally, many companies are requesting returning employees to work from home for a period of time before returning to the office.

Do Not Discriminate

Employers must keep all federal and state disability and anti-discrimination laws in mind during this time as well. The U.S. Equal Employment Opportunity Commission ("EEOC") previously released guidance on how employers can and cannot respond to a pandemic. One such issue it addresses is whether employers can screen employees for fevers. The Americans with

Disabilities Act ("ADA") prohibits employers from conducting "disability-related inquiries" and "medical examinations." Employers may require such screening under certain conditions, but it is generally disfavored. Instead, employers may request employees voluntarily self-screen upon returning from international travel.

Mandated employee quarantines may also run afoul of the ADA if not implemented correctly. If an employer wishes to implement a quarantine, it is recommended that you allow the employees to work from home, or put them on a paid leave if they cannot work during the quarantine period. Employers should also be mindful of HIPAA privacy violations. While HIPAA does have an exception if a disclosure is necessary to protect the lives of others, employers should thoroughly evaluate the situation before making such a disclosure.

In addition, the Occupational Safety and Health Act ("OSHA") requires that employers protect the safety of their employees, and this includes protecting employees from exposure to the coronavirus. OSHA recently released resources on their website regarding steps employers may take to control and prevent possible exposures. It is important to be mindful of OSHA regulations in setting your policies, however. OSHA has, for example, regulations on when and how respiratory protections and safety masks must be provided to employees.

Employers must also continue to protect their employees from discrimination on the basis of race, color, national origin, and other protected classes. The targeting of any particular class of the workforce, either by the employer or by other employees, is strictly prohibited under both federal and state laws. Policy decisions must be made with these protections in mind, and employers cannot implement response policies meant to single out any particular protected class.

Have a Plan

The biggest takeaway from the CDC's guidance is: have a plan. Work with your HR team and your employees to develop that plan. Review your current policies, not only for compliance, but also for flexibility and how those policies will play out in real life. Employers should be flexible with the plan and adapt the plan as necessary as more information is learned. For more information and further guidance, contact Matthew Mitchell.

In addition to our work in the employment area, we are advising clients in COVID-19 matters associated with contractual liability and obligations, including in the context of force majeure provisions. Please contact Faith Kasparian with questions.

Go to our full COVID-19 Resource Collection.