



CORONAVIRUS BEST PRACTICES AND CAUTIONS FOR EMPLOYERS

Although the news on the coronavirus expands daily as schools close and events are postponed, employers cannot shut down their businesses indefinitely. Employers increasingly are dealing with inquiries from concerned employees and must be prepared to respond. There are both hygiene considerations and employment law considerations which employers should address:

Hygiene Considerations and Best Practices

- **Encourage employees to wash their hands frequently with soap and water.** CDC guidance is clear that frequent handwashing is one of the best methods to prevent contracting the coronavirus as well as many other respiratory illnesses.
- **Place notices around the office reminding employees to cover their coughs and sneeze into a tissue or their elbow.** Remind employees to wash their hands or use hand sanitizer after coughing and/or sneezing to prevent the spread of germs. Remind employees NOT to sneeze or cough into their hands. The CDC links to a poster on “coughing hygiene” which you can download and print for free here: <https://www.health.state.mn.us/people/cyc/cycpgeneng.pdf>
- **Advise employees to avoid touching their eyes, nose, and mouth.** Doing so increases the spread of germs into the body.
- **Tell employees to stay home if they are sick and send employees home if they develop a fever while working.** Avoiding close contact with those who are sick is critical to curbing the spread of illness. Employers will need to be flexible about call out policies and should not take disciplinary action against employees who call out with a fever while the coronavirus outbreak is active. Notify employees when the call out policy is back in effect.
- **Advise employees who have a sick family member in their home to stay home.** As stated above, employers will need to be flexible about call out policies.
- **Schedule a “heavy duty” cleaning of all common office areas.** Have all frequently touched surfaces such as phones, keyboards, printers, coffee pots, microwaves, restrooms, and light switches disinfected. Place disinfecting wipes and hand sanitizers throughout the office for easy access and cleaning throughout the day.
- **Limit food sharing in the office.** Now may not be the time for “birthday goodies” or other shared snacks left out in the office for employees to eat throughout the day. Employees serving food should wear gloves.



Employment Laws and Legal Considerations

- **Employees treating for coronavirus may be eligible for FMLA leave.** FMLA-covered employers (50+ employees in a 75 mile radius) may need to extend FMLA leave to employees who are diagnosed with the coronavirus. The FMLA permits an employee to take leave to treat for the employee's "serious health condition" which may include coronavirus if an employee is incapacitated for 3 or more days and requires certain levels of treatment by a doctor. Have the employee submit the standard FMLA request and certification forms.
- **Consider relaxing attendance/sick leave/call out policies.** Once an employee exhausts the employee's sick leave/PTO entitlement, consider allowing the employee to take additional time off (without pay is fine if no paid time is available) without imposing disciplinary consequences if the employee or an immediate household member becomes ill. For example, if an employee has called out sick 3 times since January and a 4th call out would lead to suspension without pay, consider not enforcing that part of the company's disciplinary policy until the coronavirus outbreak has waned. Be aware that certain jurisdictions, such as Philadelphia and the State of New Jersey, have sick leave laws, and employees must be permitted to use all accrued sick leave to care for themselves OR a sick family member. Employers are not required to pay employees for time away from work once all paid time off is exhausted. Employers may want to encourage employees to stay home by offering "extra" paid time off for those affected by the coronavirus, but employers must consider the precedent being set for the next pandemic outbreak, or the next time an employee is diagnosed with a communicable disease.
- **Be careful about docking the pay of "exempt" employees (employees who are NOT entitled to overtime).** Employees who are "exempt" (i.e. administrative, executive employees) are to be paid the same amount in any week in which they perform work, unless the employee is out sick and has used all available paid time off under a bona fide sick leave policy. Be sure to carefully review records of all paid time off used before docking the pay of an exempt employee who stays home.
- **Be careful about asking sick employees if they have the coronavirus or have been tested.** Remember that the Americans with Disabilities Act covers employees who are "regarded as" being disabled. Asking employees for information about their medical conditions may trigger the ADA. Simply ask employees who are sick, particularly if they have a fever, to leave work for the day and do so without asking for specific information about the employees' medical condition. Remember to keep all medical information received (doctor's notes, etc.) confidential and not in a location where that information could be viewed by unauthorized personnel.



- **Discrimination claims are always looming!** Do not ask one “group” of employees whether they are sick or have been exposed to the coronavirus. For example, you should not monitor more closely or ask additional questions of Asian employees. Employers who see employees acting in an harassing manner toward a particular group of employees should take prompt action as the employer would in any other “harassment” situation.
- **Beware before the company permits working from home!** One of the frequent recommended actions to deal with the coronavirus outbreak is to allow employees to work from home, and that guidance may work in many situations. However, employers should be aware that if they allow employees to work from home during the coronavirus outbreak, the employers are introducing “work from home” as an available accommodation in other “disability” situations. What seems convenient now may not work for an employer in the future. For example, an employee who is permitted to work from home now later may ask for the same accommodation because of the need to attend medical appointments or care for an ill family member. It will be difficult for an employer to say later that permitting the employee to work from home is an “undue burden” when the employee was permitted to do so during the coronavirus outbreak. Also ensure that if only certain employees are permitted to work from home, the breakdown of permitted employees falls along a nondiscriminatory business “line.” For example, employees who work in positions which require use of stationary company equipment may not be able to work from home, but those who perform data entry from non-confidential, portable sources may be able to do so.

Above all, remember that communication with employees is key, and be open to discussing specific circumstances with employees directly affected. Please contact Kimberly L. Russell, Esquire at krussell@kaplaw.com or (610) 941-2541 to discuss further and visit the Employers’ Legal Defense Institute at www.ELDI.legal for information on upcoming training opportunities for employers.