

Plan. Don't Panic: 10 Things Employers Should Do to Deal with Coronavirus

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The new coronavirus is daily front-page news, and many workplaces offer ideal conditions for transmission. Foley & Lardner attorneys give 10 tips for employers on navigating the maze of employee health, safety, privacy, equal employment, and business need operational and legal challenges.

The flu-like respiratory illness Covid-19, known as coronavirus, is daily front-page news as the number of cases in the U.S. continues to rise.

We still have much to learn, but [it is believed](#) to spread through respiratory droplets between people in close proximity (six feet or less), and through touching infected surfaces and then touching one's own mouth, nose, or eyes. In other words, many workplaces offer ideal conditions for transmission.

What Are Employers' Legal Obligations to Deal With Covid-19?

Under the [Occupational Safety and Health Act](#) and similar state laws, employers have a duty to provide a safe, healthy work environment and an obligation not to put employees in situations likely to cause serious physical harm or death. At the same time, implementing broad-based bans or making business decisions unsupported by

statistical realities could expose employers to claims of disability and national origin discrimination, among others.

Further, employees' time off work may implicate obligations relating to paid sick leave. And if an employee contracts Covid-19 in the course of their employment, workers' compensation comes into play.

Navigating this maze of employee health, safety, privacy, equal employment, and business need presents an operational and legal challenge for employers. Addressing Covid-19 is complex, and this article cannot cover all of the considerations. However, at a minimum, here are 10 things every employer should be doing (or not doing) to address the Covid-19 outbreak.

10 Things Employers Should Do (or Not Do) About Covid-19

1. Ban business travel to high-risk places. The CDC has advised against all non-essential travel to China, Iran, South Korea, and Italy. Designate a management official to check the CDC website daily to see the [latest tracking](#) of the virus' spread.

This person should be involved in ban decisions. If an employee expresses fear of any business travel, have a rational discussion and review the statistics. Even if the fears are irrational, consider the negative impact on employee morale by forcing someone to travel during the outbreak.

2. Take precautions with employees returning from Covid-19 "hotspots." If an employee has traveled to such an area, consider making the employee stay home for the 14-day incubation period upon return. Make an individualized determination of whether the employee should work remotely or not, depending on responsibilities and business need.

3. Require sick employees to stay home, and determine how to compensate them. As detailed above, you have an obligation to keep employees safe. Whether you should pay sick or quarantined employees (who are not working remotely) depends on their exempt or non-exempt status; previous use of sick leave; union contracts; and your policies and benefit plans.

You can bend the "normal" rules to show concern about employee health. For example, forcing employees to stay home for two weeks without pay or to use precious PTO

could incentivize hiding symptoms or travel, which defeats the goal of preventing spread in the workplace.

4. Do not treat some employees differently. For example, do not limit your requests for employees to stay home or self-quarantine to older or pregnant employees, or to employees of specific races or national origin. Develop an approach that treats all employees even-handedly and stick to it.

5. Do not require employees to undergo medical testing. As of now, test kits for the virus are somewhat limited and can only be performed by a qualified healthcare provider. The CDC is instructing healthcare providers to be selective in how testing is administered.

Screening all employees' temperatures as they enter the workplace is likely to create more panic than benefit, and is not normally warranted. Such screening may violate the [Americans with Disabilities Act](#) (ADA), as does requiring employees undergo a medical test to confirm a Covid-19 diagnosis.

6. Communicate expectations to employees. Right now, you should be communicating with your employees to (a) emphasize the need to stay home when sick, (b) remind them of respiratory etiquette and hand hygiene, and (c) advise them to monitor their health and those with whom they live.

7. But do not ask, "Do you have coronavirus?" Such an inquiry could run afoul of the ADA. (Although it is not clear Covid-19 qualifies as a "disability," employers generally need to know whether employees are fit to work and what limitations, if any, they have—not a specific diagnosis.) Generally, you can ask, "do you have any of the specific symptoms ([listed on the CDC website](#))"?

8. Do not disclose an employee's health condition (generally). Such notification may violate diagnosed employees' right of privacy. However, if you learn that an employee has been diagnosed with Covid-19, and you have not been contacted by local health authorities, contact the health agency to seek guidance on employee communication or other steps the agency wants you to take.

9. Develop a communication plan in the case of an outbreak or pandemic. Ensure you have a way to reach all employees if they lose access to work email, regardless of where they are located. Management should also prepare for the plethora of questions employees will likely have; designate a point-person or official team to ensure consistent messaging.

10. Start business contingency planning now. Your workplace might not have any employees with a confirmed case of Covid-19, so now is the time to prepare. You should develop contingency plans tailored to your industry, the size of your business, and how you will operate if absenteeism rates go up or if you have to mandate closures.

Relevant factors include how many of your employees have remote working devices, whether you can cross-train employees, whether you have alternative suppliers, and whether you want to prioritize certain customers or functions.

The Covid-19 outbreak implicates a range of employment laws, including the ADA, GINA, OSHA, Title VII, and ERISA. To deal with individualized legal issues, you should consult your attorney.

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