



Responding to Coronavirus

With the recent announcements regarding reported Coronavirus cases in Washington State, health officials are advising of potential increases in the number of Coronavirus infections. Employers need to prepare for Coronavirus disruptions, and need to focus on prevention, anticipating employee concerns, reviewing employee policies & handbooks, implementing pro-active prevention procedures, and avoiding compliance failures.

The symptoms that people may experience from Coronavirus include fever, cough, shortness of breath, and breathing difficulties. Severe cases may result in pneumonia, kidney failure, and death. The symptoms may appear within 2-14 days after exposure and some infected individuals have shown little or no symptoms.

The CDC is indicating a national response, if required, to a widespread Coronavirus outbreak will follow a 2017 plan for a similar novel flu pandemic. The plan, if implemented, will trigger school and business closures, travel restrictions on outbreak regions, and quarantines of infected patients. There is no native immunity or vaccine in place for Coronavirus at this time.

Standard precautions are recommended and include:

- 1) Wash hands with soap and water for at least 20 seconds (If soap is not available, use hand sanitizer with at least 60 percent alcohol content)
- 2) Disinfect frequently touched objects and surfaces regularly
- 3) Avoid close contact with those who are sick
- 4) Stay at home when sick

What Should Employers Do?

The Occupational Safety and Health Administration (OSHA) requires employers to provide their employees with work and a workplace “free from recognized hazards that are causing or likely to cause the death or serious physical harm to employees.” [General Duty Clause, U.S.C. Section 654, 5(a)1] This means employers have an affirmative duty to take measures to protect their employees from known pandemic viruses. The Federal Protecting America’s Workers Act (PAWA) expanded OSHA protections to public sector employees.

The CDC has issued warnings against any non-essential travel to affected areas, such as China or Korea. It is advised to replace in-person meetings with video conferences. Employers should not force their employees to travel to affected areas at this time to avoid violating the General Duty clause.

For employees returning from affected areas, employers are allowed to screen them for fever and take appropriate action if they are displaying a fever or other symptoms of infection. Laws prohibiting disability discrimination do not apply if the employer acts reasonably to prevent the possibility that an employee might become disabled in the future or infect co-workers. An employer is allowed to inquire about disabilities or require medical testing in the following circumstances:

1. An exam is necessary to determine ability to perform the job,
2. The employee poses a real and direct threat to workplace health or safety

It is permissible to require employees exhibiting symptoms, or returning from an affected area to provide a note from a physician clearing them as fit to return to work before allowing the employee back in the workplace.

Employers should require that the physician's note specifically addresses the Coronavirus threat, but should not request that the note provide a medical diagnosis. The note should simply state that the doctor does not consider the employee to be a threat to the health and safety of the workplace, as relates to the Coronavirus.

Employers are also allowed to restrict employees who are displaying any symptoms consistent with a contagious illness to not report to the workplace. Many businesses have already established this type of policy for the flu season. It is a good practice to remind employees of the company policy before the flu season.

The CDC has advised that employers immediately send home any employees displaying symptoms at work. Employees sent home should not return until they have had 24 hours without a fever (without using fever-reducing medications), or after their symptoms have improved if they were experiencing flu-like symptoms (at least four days after onset of flu symptoms).

Employers need to make use of their rights to ensure a safe workplace, as failing to do so could result in employees organizing together and initiating a strike in protest of working conditions when there is a Coronavirus threat. Employers should make no attempt to forbid a strike, as they could be subject to a claim under the National Labor Relations Act.

It is important for employers to avoid singling out employees because of their ethnicity. While employers can require someone returning from an affected area such as China (or those who have been in close contact with someone who has recently been in an affected area), to produce a doctor's note before returning to work, it is illegal to make such requirements based solely on ethnicity. Asian employees who have not recently visited an affected area or been in close contact with someone who has recently been in an affected area should only be required to go home or produce a doctor's note to return to work if they have been displaying symptoms.

Employers are required to keep their employees' medical information confidential. They should not disclose to other employees those who have been confirmed, or even are *believed* to be infected. Employees rights of privacy must be respected. Employers can face civil liability or criminal penalties under HIPAA for disclosing protected information. The exception to this rule is that it is permissible to disclose an employee's medical information if there is a clear risk of an employee endangering the health or safety of other employees.

Some employees may be eligible for job protection under the Family and Medical Leave Act, and job protection and benefits under Washington State's Paid Family and Medical Leave Act. Employers are required to provide employees with notice of their rights, and if the employee is absent for an extended period of time for a serious health condition, the employer may be required to return the employee to his job, or an equivalent position, upon return if the employee meets certain qualifications (e.g., the employee has been with the employer for at least 12 months). Some employees may be eligible to use Family and Medical Leave job protection, or benefits, to care for a sick family member as well.

Employees are not entitled to stay home from work to avoid getting infected (except for those with pre-existing conditions that could be exacerbated). In some states, employees are entitled to take time off

for their own illness, to care for a sick or injured family member, to care for children if schools are closed, or during a public emergency.

In response to a pandemic virus outbreak, employers should encourage sick employees to stay at home (working remotely from home if possible), encourage frequent hand washing, provide hand sanitizer, disinfect work surfaces and eating areas, and provide protective equipment and clothing to employees exposed to environmental hazards. The Occupational Safety and Health Administration requires employers to comply with Recordkeeping and Reporting Requirements for all illnesses and injuries and this includes Coronavirus.

Employers should also communicate official government agency information to their employees, and refrain from communicating medical opinions from non-government sources. The US Equal Employment Opportunity Commission (EEOC) has created a guide (included below) for employers which contains practices employers should follow to ensure compliance with employment law during, or in preparation for pandemics. The guide also provides several resources for understanding employer obligations accommodating sick or disabled employees.

The Coronavirus situation may change, resulting in new requirements for employers. Employers should stay informed to any changes that are announced as a result of the increase in coronavirus confirmations.

Resources:

Washington State Department of Health Coronavirus news –
<https://www.doh.wa.gov/Emergencies/Coronavirus>

Center for Disease Control “What You Should Know” Coronavirus information –
<https://www.cdc.gov/coronavirus/2019-ncov/about/index.html>

Center for Disease Control Guidance for Businesses: <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>

Equal Employment Opportunity Commission – https://www.eeoc.gov/facts/pandemic_flu.html