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Coronavirus Guidance

In light of the rapid spread of COVID-19 coronavirus across the globe and within the United States, employers should be prepared to address any effects on their operations. While the impact will be unique to every business, the following are some issues that employers should consider.

Do employers have an obligation to protect workers from COVID-19?

The Occupational Safety and Health Administration (“OSHA”) has issued workplace guidance regarding COVID-19 (“OSHA Guidance”). The OSHA Guidance does not create any new legal obligations for employers, but it provides information on how the existing OSHA standards apply to protecting workers from COVID-19. Under those standards, employers are required to furnish employment, and a place of employment, that is free from recognized hazards that are causing or likely to cause the death or serious physical harm to employees. Therefore, employers should review the [OSHA Guidance](#) and consider actions that may be applicable to their workplaces as discussed below.

How can employer prevent employee exposure to COVID-19 in the workplace?

The Centers for Disease Control and Prevention recently issued guidance for employers related to avoiding the spread of COVID-19 in the workplace. The strategies suggested by the CDC and by the OSHA Guidance, several of which are addressed in more detail below, include:

- Actively encouraging sick employees to stay home;
- Emphasizing respiratory etiquette and hand hygiene;
- Performing routine cleaning;
- Providing employees with advice prior to travel;

- Advising employees to notify supervisors if they or a family member is diagnosed with COVID-19;
- Upon learning that an employee is infected with COVID-19, advising all other employees of the diagnosis, though not the identity of the individual, and potential exposure so that they can be tested;
- Discourage workers from using other workers’ phones, desks, offices or other work tools and equipment, when possible; and
- Explore whether they can establish helpful practices or policies, such as flexible worksites and flexible work hours to increase the physical distance among employees.

Can employers ask employees to stay home or leave work if they exhibit COVID-19 symptoms, believe the employee may have COVID-19 or been exposed to the virus?

Yes. When employees show actual symptoms of respiratory illness i.e. fever, cough, breathing difficulty, you may ask them to remain away from work until they are free of symptoms for no less than 24 hours, independent of their use of any fever reducing or symptom altering medication. Additionally, employers should repeatedly remind employees that they should stay home if they are sick.

In these discussions, remind employees of any entitlements to paid sick leave, paid time off, or vacation that can be used during this time away from work.

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Do employers need to pay employees during any time away from work under quarantine, self-monitoring, illness due to COVID-19 or care for a family member with COVID-19?

Depending upon the circumstances, an employer might be required to pay an employee during such absences from work. Employers should review applicable leave laws to determine whether pay may be required. In addition, review of internal policies should be conducted to determine whether any policies provide for pay during such time away from work. Employers should abide by such policies, including those regarding paid sick leave that is mandated by applicable law. Employees may also be able to receive income through statutory benefits such as the New York Paid Family Leave law or other similar state or local law if they are out of work caring for a family member suffering from COVID-19.

If a non-exempt employee is out of work and not performing work during that time, there is generally no obligation to pay that individual for the time away from work. However, if a non-exempt employee is permitted to work from home, stringent time recording policies and procedures must be put in place in order to ensure accurate time recording to avoid potential wage and hour issues.

If an exempt employee is out of work for monitoring or quarantine, they must be paid their salary if they perform any work functions during that time. However, if an exempt employee is out of work due to illness with the COVID-19 and is not working for any part of the day, employers would not need to pay them for their time away from work after they utilize all accrued time away from

work with the caveat that they must be paid for any day that they perform any work functions.

The answer to whether employees must be paid for time away from work while in a self-monitoring quarantine may soon change as Governor Cuomo announced an intent to amend his budget proposal to require New York employers to pay employees during this fourteen-day period. We will continue to monitor communications from the state regarding this proposal. If enacted, other states may follow suit.

Can employers disclose that an employee has been infected with COVID-19 to their workforce?

Employers can, and should, notify their workforce that they may have had exposure to an individual with the virus, however, employers must maintain the confidentiality of the identity of the infected individual. Employers may request permission from an employee to disclose their identity. The CDC has recommended general notification about exposure so that employees can be tested, self-monitor and take appropriate action in order to avoid any further spread of infection. The OSHA Guidance recommends employers put in place policies and procedures for employees to report when they are sick or experiencing symptoms of COVID-19 and, where appropriate, employers should develop policies and procedures for immediately isolating people who have reported such signs or symptoms.

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Can we require employees to provide clearance and/or documentation to return to work?

There currently is no formal process for clearing employees to return to work from COVID-19. However, employers should abide by applicable law in requesting documentation. For example, the New York City Earned Safe and Sick Leave Act only allows employers to request a doctor's note after an employee has been absent from work for more than three consecutive days. Given the expected overwhelming burden on healthcare providers, employers may want to consider relaxing documentation and return to work requirements.

If an employee has travelled to a country that is currently subject to a travel advisory due to COVID-19 by the CDC, you may request documentation of the employee's dates of travel and self-monitoring at home. If the employee did not experience any symptoms during self-monitoring, they should be permitted to return to work without restriction.

Can we impose travel restrictions on employees?

Yes and no. Employers can certainly limit or prohibit work related travel. However, barring any government prohibitions on travel to certain locations, employers cannot restrict personal travel as it is legal off duty conduct. Employers may counsel employees on the risks associated with travel to high risk areas, suggest that they not undertake such travel, and impose requirements on self-monitoring and isolation upon return.

Can employers require employees to travel as part of their job duties?

In general, employers who anticipate the need for upcoming business travel may want to consider remote accessibility options (like videoconferencing or telephone conferencing) or consider postponing nonessential travel at this time. Employer may want to assess the need versus the potential risk of such travel and consider employee preference.

Employers may require employees to engage in ordinary business travel unless there is a known, realistic threat of danger to their health or safety in sending the employees to a specific location or an employee is eligible for a reasonable accommodation under applicable law. If an employee refuses your instruction to travel for business, you should evaluate the potential health and safety risk of the travel on a case-by-case basis and may be required to engage in a review and dialogue with the employee to determine whether a request for restricted travel may be required to be accommodated. Employers should consult the Center for Disease Control's travel health notices and the other travel advisories established by the State Department. Employers should also consider the practical implications of potential self-monitoring or quarantine when traveling to or from certain destinations.

What must employers consider if a determination is to allow or encourage employees to work remotely?

As employers consider the possibility that employees may be restricted from traveling to the office, many employers are creating or reviewing remote work

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capabilities. In addition to ensuring that employees have the proper equipment, supplies and access to work remotely, employers may want to issue some guidance about working from home, including addressing the need for:

- Employees to have a safe location to work (accidents that occur while working at home are subject to workers' compensation protection);
- Employees to take steps to work in a private location and protect employer confidential and proprietary information;
- Employees to comply with all company policies, including those governing reimbursement of business expenses;
- Non-exempt employees to properly record and report any time worked and continue to take required meal breaks; and
- Employee accessibility and availability during prescribed working hours.

Can employers require employees to be vaccinated if a COVID-19 vaccine is developed?

No. Employers cannot require employees to be vaccinated. However, employer should provide employees with educational materials regarding the effectiveness and importance of vaccination in order to decrease the risk of continued spread of COVID-19. Employers should also consider offering the vaccine, and the flu vaccine, on site at no cost to employees in order to increase the likelihood and rate of vaccination amongst the workforce.

Are employers required to provide employees with leaves of absence due to COVID-19?

Possibly. Depending upon the circumstances necessitating the employee's need to be away from work, employees may be entitled to a protected leave of absence under the Family and Medical Leave Act, the New York Paid Family Leave Act and other state and local sick leave and scheduling laws.

What should employers do if schools or childcare is closed and employees have no options to care for children?

In this circumstance, employers should allow employees the option of working from home, if possible, or a paid or unpaid leave of absence to care for their children. If available, employers should allow employees to use any accrued paid time off to avoid loss of income under such circumstances. Depending upon the circumstances of the closure, such closure may be covered by the New York City Earned Safe and Sick Leave Act or similar state or local law.

What else can we do to protect the workplace from COVID-19?

- Set up teleconferences in favor of in person meetings, whenever possible;
- Educate your workforce on the importance of staying home when ill;
- Provide employees with information on proper hygiene, coughing and sneezing etiquette, and handwashing;
- Place hand sanitizer around the office that contains at least 60% alcohol;
- Make tissues available to employees;
- Provide disposable anti-bacterial wipes for wiping down doorknobs, keyboards, remote controls and desks; and
- Speak to your landlord about increased cleaning and using bleach-based products.

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For more information or if you have any questions about how this new development may affect your business, please contact a member of our Employment team.



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