

**BLOGS**

Archives;Discrimination;Workplace Safety

## Combating Ebola in the Workplace and Fearbola Too!

For the first time in weeks, online news reports have been relatively Ebola free. This week, [the last Ebola](#) patient in the U.S. was declared Ebola free and released from the New York hospital where he had been quarantined. There are currently no known Ebola cases in the U.S.

Nevertheless, I am continuing to field questions about how employers can keep their workplaces free of the potentially deadly Ebola virus. In addition to being concerned about their employees well-being, these employers are mindful that federal and state OSHA laws require employers to take reasonable steps to maintain a safe workplace.

It is definitely wise to take the recent Ebola outbreak seriously, to stay up to date, and to implement any [CDC](#) and [OSHA](#) guidelines and protocols that apply to your workplace. It is also important, though, to keep perspective. While some types of jobs pose higher risks (i.e., health care, laboratory, mass transit, death, or cleaning positions), most U.S. workers face far greater risks from the seasonal flu than from Ebola.

Last month, I read an article on CNN that, while tongue in cheek in tone, included an important take-away message that holds true for employers. In the [article](#), the author wrote about the scariest virus in America Fear-bola. The author described Fear-bola as follows:

*Right now, two-thirds of Americans are suffering from “Fear-bola.” . . . It’s a hyper-contagious disease that affects the brain, making sufferers fear a widespread Ebola outbreak in the United States.*

*Fear-bola is an airborne disease that spreads through conversation, entering your brain through your ears. . . . Once inside your body, Fear-bola attacks the part of the brain responsible for rational thinking. . . .*

The author then made the following critical point: Fear-bola is dangerous because it leads to confused decision-making and illusions. This point is one I have made in talking with employers about Ebola concerns. In the employment law area, one of the most dangerous things to do is to make decisions based on fear, speculation, or emotion rather than concrete, legitimate business concerns or risks. None of us make our best decisions when we are scared or acting on conjecture.

### Related People

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And, it far easier for an employer to challenge a decision that is not well-grounded in fact or reason.

While employers have a legal duty of safety, overreacting to Ebola concerns without a real, concrete risk to your workplace can pose other legal risks. So, a balanced approach is wise. In seeking balance, some of the key issues to keep in mind include:

- *Non-Discrimination Obligations:* Employers should be mindful of the employment laws prohibiting racial or national origin discrimination. Because the Ebola outbreak has primarily affected West African countries, employers should ensure that measures they take are not targeted solely at individuals of West African descent and that neutral measures do not have an inappropriate disparate impact.
- *Limits on Disability Inquiries:* Disability discrimination laws place limits on medical exams and the nature and timing of medical inquiries that can be made of applicants and employees. When the H1N1 pandemic was in the news some years ago, the Equal Employment Opportunity Commission (EEOC) issued a [Pandemic Preparedness](#) guidance document addressing what types of medical inquiries are permissible and when a medical exam (which includes requiring employees to take their temperature) can be required.
- *Leave Laws:* If you do have a sick worker whether due to Ebola, the flu, or some other infectious disease – you’ll want to assess whether the individual is entitled to time off and any other benefits under your company policies or any applicable leave of absence law. For example, an ordinary bout of the flu typically doesn’t trigger Family and Medical Leave Act (FMLA) rights, but more serious cases – particularly if they require hospitalization can implicate the FMLA or other leave laws.
- *Anti-Retaliation Rights:* It may be tempting to discipline or terminate an employee who, out of fear, refuses to come to work or to perform certain duties. Keep in mind, though, that employees have anti-retaliation protections under OSHA and other laws if they are making a good faith complaint that an employer is not meeting its safety obligations. In addition, depending on the employees situation, you may need to review whether any disability discrimination law issues are at play.

While you should stay mindful of these legal issues, there are a number of sound, reasonable preventive measures to consider adopting as we keep our fingers crossed and hope that we’ve seen the last Ebola case in the U.S. Educating employees on infectious disease and encouraging flu shots and good hygiene is always a good idea. In addition, businesses can consider limiting non-essential business travel to Ebola-affected countries, implementing a lawful approach to asking employees narrowly tailored questions about personal travel or other forms of possible exposure to Ebola, and encouraging and incentivizing sick workers to stay home. If you have evidence of a real, concrete risk of Ebola to your workplace or employees and customers in higher-risk categories, such as health care, other more aggressive measures might also be permitted. In the end, though, running your actions past legal counsel to ensure a balanced approach is wise.