Employment Alert: Coronavirus and the Workplace

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While the incidence of COVID-19 ("coronavirus") in the United States is still low, employers would be well advised to consider the potential impact on the workplace and strategies to respond.

The U.S. Centers for Disease Control and Prevention (CDC) recommends that employers consider several steps that may reduce the likelihood of workplace exposure. These include:

- Actively encourage sick employees to stay home. Employees with acute respiratory illness should remain home until symptom- and fever-free for at least 24 hours. Consider relaxing attendance and sick leave policies to permit employees with respiratory illness to remain off work without penalty.
- Promote good hygiene. Remind employees of the importance of frequent hand washing and covering coughs and sneezes with a tissue or their elbow, rather than their hands. Experts are also recommending that individuals limit touching their mouth, nose or eyes without first washing their hands. Provide adequate hand washing facilities, alcohol-based hand sanitizer, and tissues.
- Keep the environment clean. Focus on frequently touched surfaces such as keyboards, door knobs, equipment controls, handrails, copiers, and telephones. Provide hand wipes to allow employees to clean before using as well.
- Assess travel situations. Consider necessity of, or alternatives to, business travel to areas experiencing active infection. Review CDC guidance regarding risk assessment and response for travelers.

In addition, the CDC suggests considering possible strategies to address the potential disruptions caused by an outbreak, such as employees forced to stay home due to school closings or their own possible exposure or infection. These strategies would necessarily vary based on the nature and severity of the situation, and the employer's business, but from a human resources perspective could include such things as social distancing measures, maximizing the ability to work remotely, or modifying sick leave/attendance policies.

A more complete discussion of the CDC Guidance for employers and other information, including sample informational material, can be found at https://www.cdc.gov/coronavirus/2019-ncov/index.html.

Further, employers must not lose sight of the fact that coronavirus infection is a medical condition, which means that various requirements and employee protections may apply. For example, an employer's ability to ask disability-related questions and require medical examinations may be limited by the Americans with Disabilities Act (ADA). Recent guidance from the Equal Employment Opportunity Commission (EEOC),

however, states that the ADA will not prevent an employer from following the recommendations of the CDC, including requiring employees with flu-like symptoms to stay away from the workplace. Earlier guidance provided by the EEOC on pandemic flu and the ADA provides some useful reassurance that, generally, the ADA will not prevent an employer from protecting its workforce as long as the employer's actions and inquiries are focused on the situation at hand and don't stray into broader, more wide-ranging medical issues. (See www.eeoc.gov/facts/pandemic_flu.html).

Employers should also be mindful of privacy considerations. If an employee is out of the office due to illness or an exposure quarantine, this information should be treated as confidential and only de-identified information should be shared with other employees. If an employee must be out for illness or quarantine, an employer should also consider whether the employee has time off rights and protections under the employer's policies and any applicable leave laws, such as the federal Family Medical Leave Act and state or local laws.

Another consideration is nondiscrimination laws. Employers should ensure that they implement their preventive and response measures on a nondiscriminatory basis, without engaging in or permitting any stereotyping or differential treatment based on an employee's protected characteristics, such as, but not limited to, being of Chinese or other foreign descent.

As the situation evolves, employers should consult updates from the CDC, state and local health departments, the EEOC, and other interested agencies to be advised of the latest developments. Flexibility in crafting a response that suits your workplace will be a key in responding to this challenge.

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