

Coronavirus: Best Practices for Planning and Policy Development

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Practice Area: Business and Corporate Law & Labor and Employment

Recently we have seen a heightened concern with the Coronavirus disease 2019 (COVID-19) and its impact on the general public. The implications of COVID-19 have also had a significant effect on the ability of public and private employers to continue day to day operations in light of the illness (to employees and in the general population) and the disruption in the procurement, production and distribution chains of the entities due to the disease. From an operations perspective, employers are challenged with addressing questions concerning employee safety, absenteeism, handling the “working sick” and planning for the potential of mandatory or self-determined quarantine. Employers are wisely communicating with employees on these issues and also directing employees to resources like the CDC and other government agencies for accurate information. Given these ongoing and growing challenges, employers ask: Does the employer need a policy?

Our suggestion is **“yes,”** as a policy will provide better guidance on those issues likely to impact the business. Much like we have seen before with the Swine Flu and other national medical challenges, employers must evaluate how the illness will impact its business and groups of employees. Employers must establish a procedure to address anticipated operational vulnerability and develop a protocol to protect employees, calm fears and facilitate the operation of the business. Our suggestion is that employers consider:

- Defining the scope and extent of the Policy the employer wants to implement. Is the intention only to be responsive in the event of a declared emergency or to address concerns of exposure to the virus and pre-plan for the impact of the disease on operations?
- Defining what aspects of the operation will be impacted by the experiencing of COVID-19 in the work environment and the response plan to the challenges.
Consider:
 - Employees coming to work when experiencing the “flu” or having flu-like symptoms.
 - Employee communication responsibilities and protocols, including point persons of contact other than the employee’s supervisor such as designated human resources personnel for employee medical matters and public relations personnel involving media and other public inquiries.
 - Travel limitations by type (airplane, car, train) and/or location (domestic, international, state-specific).
 - Requiring attendance at group meetings and functions as opposed to other alternatives like teleconference or Skype.
 - Required physician clearance for return to work from extended illnesses.
 - Limiting outsider access to the facility and employees (customers, sales people, repair people).
 - Communicating a containment plan in the event of employee exposure/diagnosis.
 - Requiring PPE use and hygiene protocol for employees.
 - Absenteeism and paid vs. unpaid time away from work for illness/quarantine periods. Employers should carefully address paid and unpaid leave related to salaried exempt personnel and Fair Labor Standards Act Safe Harbor principles and FMLA intermittent leave rules, and public-sector employers should also pay particular attention as to deductions from salary for “public accountability” purposes permitted by the FLSA.
 - Absenteeism associated with child care issues, school closing, public transportation interruption and other community based response issues.
 - Alternative work opportunities and locations, including remote work options.
 - Facility cleaning and disinfection process.
- Identifying decision makers to implement an action plan and the chain of command.
- Communicating plan on policy implementation, HIPAA compliance and expectations and develop the communications protocol for periods of quarantine, closure or limitations on work and access.
- Addressing cyber security plan associated with alternative work sites and unsecured access portals.
- Coordinating information and actions with federal, state and local agencies identifying sources of information and sources for reporting.

It is critical employers reflect a flexible approach and include the stakeholders in both the development and implementation of the policy and operational plan. Because there is so much unknown in the appropriateness of response, we also recommend employers work with local communities, health departments, chambers of commerce and professional associations to look for best practices in addressing your policy and plan.

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