

HR Heads-up

PERIODIC UPDATES ON IMPORTANT HR LEGAL ISSUES

MARCH 11, 2020

Planning for the Coronavirus

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The continuing spread of COVID-19 (commonly known as the Coronavirus) might have a major impact on the operations of many organizations, and organizations should plan for such impact. The Coronavirus is the latest illness that has the potential to reach “pandemic” status across the globe and in the United States.

Employers should stay up to date with the latest information from the federal Centers for Disease Control (CDC), and the Wisconsin Department of Health Services (DHS). Guidance and resources from the CDC are available at <https://www.cdc.gov/coronavirus/2019-ncov/index.html>. Guidance and resources from DHS are available at <https://www.dhs.wisconsin.gov/outbreaks/index.htm>.

While employers of all sizes should prepare for the coronavirus, they must also remain vigilant about preventing discrimination based upon race or national origin. It is critical that employers do not permit the stigmatizing effect of erroneously associating the virus with a specific population. As noted in the CDC’s guidance “[Stigma Related to COVID-19](#),” viruses “cannot target people from specific populations, ethnicities, or racial backgrounds.” Employers should remind employees about applicable anti-discrimination and anti-harassment policies.

Employers planning for the Coronavirus should consider the following issues in further detail.

ATTENDANCE

An employer might have to modify or suspend its attendance policies for employees who cannot come to work due to the virus. The standard for using sick leave and the definition for unexcused absences might have to be temporarily adjusted, particularly in situations where the CDC or DHS recommends that an employee stay home from work. The employer should clarify the health and safety situation for which it is suspending or adjusting attendance rules, so that it can continue to enforce attendance for those who have absences for unrelated reasons. The employer should also communicate to its workforce when any adjustments to the attendance rules will take effect and will cease to be in effect.

Employers should consider following CDC guidance and potentially encourage workers suffering from fever or respiratory illness to stay home until they have been free of symptoms for 24 hours or have been cleared to report to work by a medical professional.

Employers should consider whether employees who are unable to report to work, or are recommended not to report to work, qualify for Family and Medical leave (FMLA), especially those employees who have been

diagnosed with the Coronavirus or are caring for family members who have been diagnosed. Precautionary quarantines due to return from travel or exposure without a diagnosis likely do not involve a serious health condition and thus are unlikely to qualify for FMLA leave.

Employers should also consider whether they should cancel or limit work-related travel internationally or even to specific domestic locations where the Coronavirus is more prevalent. Additionally, organizations should decide whether to cancel in-person group meetings and company events.

The Americans with Disabilities Act (ADA) prohibits employers from making medical inquiries in several situations. For example, blanket requirements that people be tested for the Coronavirus may be a violation of the law. Requiring a medical certification or fitness for duty note from a physician may be appropriate if an employee has symptoms of the Coronavirus, has been in close contact with a person who had been positively diagnosed with Coronavirus, or is returning from travel to an area where the Coronavirus is known to be prevalent. An employee who has tested positive for Coronavirus may create a “direct threat” to the workplace, so, with appropriate consideration, an employer may be able to place a person on leave until medically cleared to return.

Before employers decide not to pay employees while they are off work for Coronavirus-related reasons, they need to verify their internal paid leave policies. Employers cannot deduct from the weekly salaries of employees who are exempt from overtime, except for employees who are absent for an entire workday and do not qualify for or have exhausted their sick leave. If an employer requires an exempt employee to stay home, the employer should not deduct that employee’s pay. In addition, exempt employees must generally be paid their full weekly salary even when they are not asked to come to work because a business has shut down, unless the business has shut down for an entire workweek.

CONFIDENTIALITY

Communication with or about employees must be done in accord with the various laws on medical confidentiality. For example, organizations should not tell all employees that a specific employee has tested positive or negative for the Coronavirus. Any medical information, including any decision regarding an employee due to potential exposure to the Coronavirus, should be kept confidential.

STAFF COVERAGE

Employers should consider cross-training employees to cover priority operations in the event an employee is absent from work.

Independent contractors who work off-site might be able to provide services for specific projects and processes. Organizations should be sure that such contractors meet the legal definition for independent contractors.

Organizations should identify which employees can perform their job duties remotely from home or another location. Organizations requiring remote work should coordinate with their IT departments or vendors to ensure appropriate security for remote work (including the security of computers, tablets, and cell phones).

Employers can generally require employees to work from home. For employees who are asked to work remotely, employers should develop protocols for tracking remote work hours to limit potential wage claims, especially from employees who are not exempt from overtime pay requirements.¹

Employers should clearly document the extraordinary circumstances that led to requiring employees to work remotely. Otherwise, employers may inadvertently build an expectation that employees may work from home on a long-term basis. This may set precedent for the future in the event an employee with a disability seeks to work from home as an accommodation.

UNION WORKPLACES

For organizations with employee unions, unions must be involved in any revisions or adjustments to workplace policies that are within the scope of mandatory bargaining or would modify practices covered by a collective bargaining agreement.

VENDORS AND SUPPLIES

Organizations should communicate with vendors to ensure the least disruption of operations. They should identify alternative vendors and communicate with them regarding supplies and services if primary vendors are unable to meet the organization's needs. Organizations should also consider whether to build up inventory in advance of potential supply shortages.

CLEANING PROTOCOLS

Employers should encourage employees to wash their hands often and consider posting signs to do so in restrooms, breakrooms, and other common areas. Employers should consider providing hand sanitizer in such locations as well.

Organizations should also consider scheduling additional cleanings of the workplace, particularly restrooms, breakrooms, and other common areas.

COMMUNICATION PROTOCOLS

Special communications protocols should be implemented to handle greater than usual absences, to stay in communication with employees who are ill, to tell employees whether to report to work or not, and to arrange delivery and pick-up of work product done off-site.

CONCLUSION

While the Coronavirus might lead to many complications in the workplace, organizations that plan ahead will be better positioned to address these complications. Employers that establish good communication with employees will also be well-positioned to mitigate the concerns that employees are likely developing about the Coronavirus. Communicating a Coronavirus plan to employees will likely instill greater confidence and will allow employees to continue focusing on performing their jobs in the wake of the illness.

¹For more information on working remotely see the article [Have You Done Your Homework on Home Work](#) by Boardman Clark.