



Coronavirus: How Employers Should Prepare for A Possible Outbreak in the United States

March 12, 2020

With recent media attention on the potential spread of the coronavirus (COVID-19) within the United States, and the Trump administration's declaration that the virus is a **public health emergency**, many employers have questions about what they can do to prevent a spread without significant interruption to business operations.

The spread of COVID-19 in the United States could cause various possible disruptions to Americans' daily lives, including employees becoming ill themselves or having to care for family members who are ill at home, employees taking sick days or asking (or being required) to work from home, employees working overtime, school closings, and many others. Employers are already facing a host of questions on such issues as: How do I address employees who have recently traveled abroad? Are employees unable to work entitled to be paid? For covered employers, what are the Family and Medical Leave Act ("FMLA") implications? Are there any protocols we should implement in the workplace? What about unionized employees?

The CDC has posted guidance on strategies that employers are recommended to use now in preparation for an outbreak. These recommended practices include actively encouraging sick employees to stay home, separating sick employees from other employees, emphasizing to employees to stay home when sick, stressing respiratory etiquette and hand hygiene by all employees, performing routine environmental cleaning, and advising employees to take certain steps before traveling. Other measures include accounting for employees who are well but who have a sick family member at home with COVID-19, as well informing fellow employees of their possible exposure to the illness in the workplace while still maintaining the confidentiality required by law if an employee is confirmed to have the infection. You can read the CDC's full guidance here:

<https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>.

The Occupational Safety and Health Administration ("OSHA"), which administers workplace safety laws, also has a comprehensive resource devoted to dealing with COVID-19 issues: <https://www.osha.gov/SLTC/covid-19/>.

Employers should be mindful of employees showing symptoms of acute respiratory illnesses. Employers should also inform employees that if they show symptoms of acute respiratory illnesses, they should notify their supervisors who can take appropriate measures, such as sending the employee home, in accordance with CDC recommended practices. Further, employers should be flexible in allowing employees to stay home if they are sick or must care for sick family members. Employers should also be flexible in requesting a note from a healthcare provider documenting an employee's acute respiratory illness to validate the employee's illness or to return to work. Supervisors who become aware of an employee showing symptoms of an acute respiratory illness

or who may have been exposed to another who has been confirmed to have COVID-19, should refer the employee to CDC guidance for how to conduct a risk assessment here: <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>.

If employees must miss work because of exposure to the coronavirus, they should be permitted to use accrued sick or vacation time so as not to lose pay. Due to the unique public nature of this disease, some employers may choose to continue pay irrespective of accrued leave entitlements. However, the law generally does not require employees to be paid for time not worked. (Note that employees who are considered “exempt” under the Fair Labor Standards Act (FLSA), and are paid on a salary basis, must be paid their entire weekly salary in any week in which they perform any work, with some exceptions.)

Employers may consider whether an employee can work from home on a temporary basis; however, this will not be suitable for all employees, such as those who must be physically on site to do their jobs. In extreme cases, an employer could even consider a temporary closure of operations, which could result in the temporary furlough of all employees. Employers who have business interruption insurance should consult their carriers to discuss further options.

In light of these issues and recommended practices, employers are encouraged to ensure that their actions and policies are in compliance with federal, state and local labor and employment laws. All employers should review their policies and procedures (e.g. sick leave, attendance, remote working) which may be affected by a coronavirus outbreak to ensure they are flexible and consistent with public health guidance and that employees are aware of these policies. This is especially the case when there is a possibility that numerous employees must concurrently take sick time to take care of themselves or family members and issues could arise regarding the pay of salaries and wages.

If you have questions regarding any aspects of employment law and any implications the COVID-19 virus has caused or will cause to your place of business, feel free to contact Thomas B. Wassel at (516) 357-3868 or via email at twassel@cullenllp.com, Hayley B. Dryer at (516) 357-3745 or via email at hdryer@cullenllp.com or James G. Ryan at (516) 357-3750 or via email at jryan@cullenllp.com.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Practices

- Labor and Employment