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Originally Published: March 16, 2020 (9:49am)

Updated: March 26, 2020 (9:00am)

GUIDANCE FOR MANAGING THE CORONAVIRUS

The World Health Organization has now declared the 2019 Novel Coronavirus disease (COVID-19) a global pandemic; colleges have closed campuses for the semester, sporting seasons have been canceled and some local governments have banned large public gatherings. The virus is thought to spread from person to person through close contact (within 6 feet) and through respiratory droplets when an infected person coughs or sneezes. Because the virus is so easily transmitted, the workplace is considered a major concern for transmission. On the evening of March 13, 2020, the House of Representatives passed an initial iteration of what would eventually become the Families First Coronavirus Response Act (FFCRA). The President signed that into law in the early evening of March 18, 2020.

What safety precautions should an employer implement?

On March 10, the Occupational Safety and Health Administration (OSHA) issued its guidance to assist employers in preparing for COVID-19. <https://www.osha.gov/SLTC/covid-19/>. Although the guidance does not create any new legal requirements, OSHA recommends that employers develop an Infectious Disease Preparedness and Response Plan, implement basic infection control measures, and develop policies for the identification and possible isolation of infected employees.

Along these same lines, the [Centers for Disease Control is recommending standard precautions](#) to avoid the spread of respiratory viruses, such as washing hands with soap and water for at least 20 seconds, or, if soap is not available, using hand sanitizer; avoiding close contact with people who are sick; staying at home when you are sick; and disinfecting frequently touched objects and surfaces.

OSHA suggests similar practices:

- Providing tissues, no-touch trash cans, hand soap, alcohol-based hand rubs containing at least 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.
- Requiring regular hand washing or using of alcohol-based hand rubs.

- Posting handwashing signs in restrooms.

Other recommendations from both OSHA and the CDC are to consider cancelling non-essential travel to areas experiencing outbreaks; allowing employees to work remotely where possible and encouraging employees to stay home if feeling sick.

What can you do if an employee has recently traveled to an area experiencing an outbreak or exhibits symptoms of COVID-19?

Although the Americans with Disabilities Act places limits on some medical inquiries, the [EEOC's Pandemic Preparedness Guidance](#) which was originally created in 2009 in response to the H1N1 flu pandemic and was updated on March 21, 2020, to address COVID-19 provides that you can inquire about an employee's travel to areas affected by the outbreak and about the employee's potential exposure to infectious diseases. You can also require that employees who have travelled to affected areas or exhibit symptoms of COVID-19 to stay home from work for the recommended 14-day quarantine period. You should nevertheless maintain the confidentiality of any medical information gathered.

The EEOC surprised many by updating its pandemic guidance to generally allow employers to take the temperatures of all employees before permitting them to work. While temple and ear canal thermometers are not the most accurate, and while some patients with COVID-19 never run a fever, this could be a good preventive measure in hot spots, healthcare, and where employees are required to continue to work in close proximity. We recommend you consult with your employment counsel about risks and benefits of such a practice.

A word of caution. To the extent you inquire about an employee's potential exposure or even take temperatures, you should do so for all similarly situated employees and should not target employees for inquiry based on an employee's race or national origin. You should base your inquiry on the employee's display of symptoms, exposure to a known infected person or travel to an area of outbreak.

Do you have to pay an employee who is required to stay home because of possible exposure?

Obviously, if you provide sick leave or some other form of paid time off, employees will be entitled to use such time under the terms of your policies.

Beyond the available PTO, for exempt employees, under current law you do not have to pay for absences of an entire workweek (a week in which the employees do not work at all). If, however, the absences are for a partial workweek, it depends on whether the absence was because the employer required the employee to stay home or instead because the employee's medical condition necessitated their absence. If the absence was at the employer's direction, then you would have to pay for the time off. If it was because of the employee's sickness, then you would not have to pay for days on which

the employee did not work if you have a bona fide general sick leave policy in place (most PTO plans qualify if the available leave can be used for sickness).

For non-exempt employees, under current law, you generally do not have to pay for time off whether initiated by the employer as a precaution or at the employee's election because of illness.

In both cases, however, you should consider the practical implications. Do you want potentially infected employees coming to work to maintain their paychecks? Given the implications for remainder of your workforce, you may want to consider some form of sick pay to encourage employees to make the safe choice.

But most of this changed on March 18, 2020. What emergency measures did Congress adopt in the FFCRA?

The Act provides for paid leave for employees out of work because the Coronavirus. There are two components to the legislation: (1) the Emergency Family and Medical Expansion Leave Act and (2) the Emergency Paid Sick Leave Act.

[Learn more about the FFCRA here.](#)

Key recommendations:

- Communicate and reinforce safe workplace practices (e.g., hand washing, disinfection)
- Encourage employees who experience symptoms to stay home
- Communicate how absences will be handled (under both absenteeism policies and for purposes of compensation)
- Allow work from home where feasible