

Coronavirus and the Workplace

Part I: Safety

March 3, 2020

Obligations under the Occupational Safety and Health Act

The Occupational Safety and Health Act (OSHA) governs the health and safety of workers and workplace. Under Section 5(a)(1), employers have a general duty to provide a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harms to the employees. Accordingly, in a pandemic, an employer can violate OSHA if it subjects the workers to exposure to the pandemic virus or fails to take adequate measures to reduce the exposure and spread of the pandemic virus present in the workplace.

The Occupational Safety and Health Administration ("the Administration") has acknowledged the risk of COVID-19 exposure in the workplace by issuing guidance on COVID-19. The guidance is expected to change in light of the changing circumstances surrounding the spread of COVID-19 internationally and in the U.S. To date, the Administration nonetheless maintains that risks of infection for most U.S. workers are not significant, but that the exposure risk is elevated for those involved in healthcare, deathcare, airline operations, waste management, and business travel to areas where the virus is spreading.

No specific OSHA standards or regulations specifically concerning pandemics currently exist. However, certain OSHA standards may be applicable and impose obligations on employers to protect workers from COVID-19. Some standards, such as those for personal protective equipment ("PPE," 29 C.F.R. §1910.132) and respiratory protection (29 C.F.R. § 1910.134), may require employers to assess the potential hazards of COVID-19 in the workplace. In their assessments, employers should:

- Consider if workers may encounter someone infected with COVID-19 in the course of their duties.
- Determine if workers could be exposed to environments or materials contaminated with the virus.
- Depending on the setting, rely on the identification of sick individuals who were potentially infected with the virus to ascertain exposure risks and implement appropriate control measures.

Other standards, such as OSHA Bloodborne Pathogens standard (29 C.F.R. 1910.1030), can offer a helpful framework to control some sources of the virus, including exposures to body fluids. Additionally, in a pandemic, employers may have obligations under applicable OSHA general industry standards, for instance, those concerning recording and reporting occupational injuries and illnesses (29 C.F.R. Part 1904), sanitation (29 C.F.R. § 1910.141), access to employee exposure and medical records (29 C.F.R. § 1910.1020), hazard communication (29 C.F.R. —1910.1200), and occupational exposure to hazardous chemical in laboratories (29 C.F.R. § 1910.1450). And, pursuant to OSHA Section 11(c), employers may not retaliate against workers for raising concerns about safety and health conditions, including occupational exposure to COVID-19.

The Administration has also developed interim guidance for control and prevention of COVID-19, which advises employers to:

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- Remain aware of the evolving outbreak situations.
- Promptly identify and isolate potential infectious individuals where exposure to the COVID-19 may occur.
- Carefully evaluate whether work areas occupied by people suspected to have the virus may have been contaminated and whether decontamination is necessary. However, OSHA notes that, typically, there is a limited need for decontamination outside of healthcare and deathcare facilities.
- Train all workers with reasonably anticipated occupational exposure to COVID-19 about the sources of exposure to the virus, the hazards associated with that exposure, and appropriate workplace protocols in place to prevent or reduce the likelihood of exposure.
- Consult the interim guidance for specific worker groups at higher risk of occupational exposures to COVID-19.

Recommendation for Employers from the Center for Disease Control and Prevention

Employers should also consult the Center for Disease Control and Prevention ("CDC")'s recent interim guidance for businesses to plan and respond to COVID-19. According to the CDC, employers are recommended to implement the following strategies:

- Actively encouraging sick employees to stay home.
- Separating sick employees.
- Promoting respiratory etiquette and hand hygiene in the workplace.
- Performing routine environmental cleaning, especially of all frequently touched surfaces.
- Advising employees to take certain precautionary steps before traveling.
- Instructing employees who have a sick family at home with COVID-19 to notify their supervisor and referring the employees to CDC guidance regarding potential exposure.
- Notifying employees, whose co-worker is confirmed with COVID-19, of their possible exposure to COVID-19, while maintaining confidentiality as required by the ADA, and referring the employees to CDC guidance regarding potential exposure.

Employers are also advised to plan and be prepared to respond to COVID-19. In designing and implementing an infectious disease outbreak response plan, employers should:

- Identify sources of work-related exposure and health risks to employees.
- Review policies and practices to make sure that they are consistent with law and public health guidance.
- Explore whether certain policies and practices, such as flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), can be established.
- Prepare to minimize exposure between employees and also between employees and the public, if public health officials call for social distancing.
- Identify the critical elements for the business to operate, and plan for operation in the event of increasing absenteeism or interrupted supply chains.

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- Set up authorities, triggers, and procedures for activating and terminating the response plan, altering business operations, and transferring business knowledge to key employees.
- Establish a communication process to employees and business partners about the response plan and latest COVID-19 information, in light of anticipated fear, anxiety, rumors and misinformation.
- Study local community plans in place by local public health officials where employers have a business.
- Engage state and local health departments to confirm channel of communication and methods for dissemination of local outbreak information.
- If there is evidence of a COVID-19 outbreak in the U.S., consider canceling non-essential business travel to additional countries per CDC's travel guidance and canceling large work-related meetings or events.

CDC also has additional guidance for business travel, airline workers, health care professionals, and laboratories.

This is the first of a four-part series. Please find parts 2, 3 and 4 here:

Part II: Non-Discrimination

Part III: Leave

Part IV: Pay

This information is based on the facts and guidance available at the time of publication, and may be subject to change.