




COVID-19 Guidance for Employers: Steps to Take Now

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Introductions

- Phyllis Karasov, Shareholder, Larkin Hoffman
- Chair of Larkin Hoffman Labor and Employment Law Department
- Labor and Employment Law Specialist, certified by the MSBA
- Advises clients in all areas of HR including employment agreements, employee handbooks, employee relations issues, and discrimination
- Presented at numerous conferences and seminars
- Named a Super Lawyer® by *Super Lawyers* magazine every year since the program began

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Introductions

- Larry Morgan, SPHR, SHRM-SCP, GPHR, MAIR
- MNCPA HR Hotline
- HR experience with Best Buy, Lawson Software, JD Edwards, National Car Rental, CUNA Mutual Group, HB Fuller, Grant Thornton Public Accounting
- Community/adjunct faculty with U of M and St. Mary's University
- Instructor for Twin Cities - SHRM
- Orion HR Group, LLC

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Agenda

- Generate further understanding of employer options and responses
- Focus on employer response and issues
- Understand government vs. organization role
- What to do NOW!
- Review legal issues

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Coronavirus basics

- Known as Covid-19
- Co = Corona, Vi = Virus, D = current version 19 = 2019
- Unprecedented situation
- Spreading rapidly
- High risk populations
- Rapidly changing environment

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Concerns

- Protecting and calming employees
- No vaccine developed
- Speed of virus
- Lack of preparedness by government
- Lack of knowledge
- Employee issues
- Schools / daycare / businesses closing or reducing hours
- Economic impact
- Supply chain impact

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What is the government doing?

- Several agencies are coordinating efforts to address the issue
 - World Health Organization
 - Center for Disease Control
 - Department of Homeland Security
 - State Health Departments
 - OSHA
 - Department of Labor
- Funding and economic stimulus package
- Families First Coronavirus Response Act
- Testing kits
- Quarantining high risk
- May provide day care for first responders and health care workers



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Organization responses

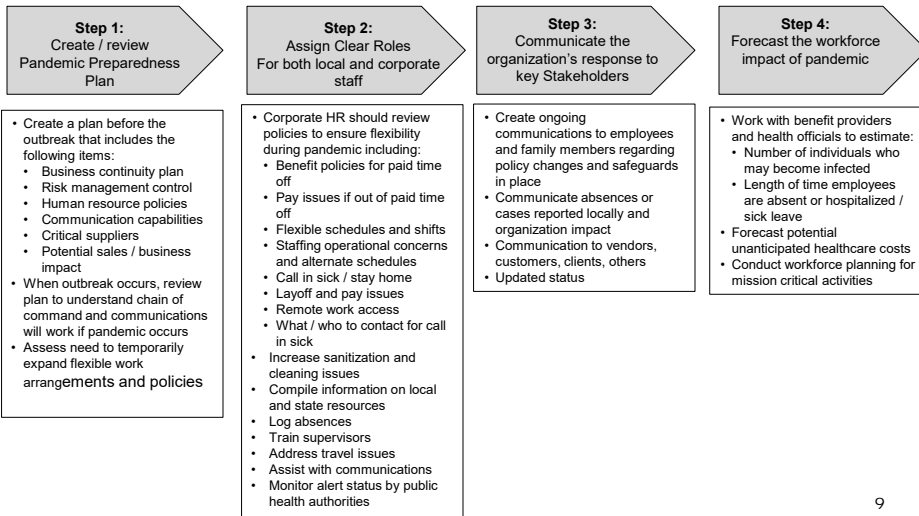
- Absenteeism policies loosened
 - Employee and family illness
 - School and day care closing
 - Doctor notice requirements
- Offices closing
- Promote remote access
- Alternate schedules
- Travel restrictions
- Limit meetings and group activities including trade shows and public events
- Addressing employee work sites in high risk areas
- Alternate supply chain sources



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Pandemic Action Steps



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What should my organization do?

5 key areas:

1. Employee communication strategy
2. Minimize spread
3. Develop alternative work strategies
4. Conduct skills inventory and determine essential staff
5. Create crisis management plan

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Crisis Management Plan

- Team comprised of HR, legal, facilities, security, communications, corporate medical contact
- Tie into business continuity/disaster recovery plan
- Assess alert levels
 - **Level 1-** contact local authorities for guidance, review plans, meet every one to two weeks
 - **Level 2-** Basic health/hygiene education to employees, monitor absenteeism, ensure protective materials are available, curtail business travel, limit visitors, cease large meetings and in-person training programs
 - **Level 3-** Disinfect buildings, require remote work options, discuss what customer interface activities to eliminate
 - **Level 4-** Reduce all non-critical activities, cease customer and employee facing activities, all employees use remote work options, communication to visitors, customers, clients and vendors.

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Take inventory

- Assess organization operations
- What functions/activities are “core”?
- Which employees are “essential”?
- What are minimum staffing levels needed for operations?
- Alternative scheduling?
- Cross training or procedure documents
- Alternative means of product or service delivery

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Additional areas

- Limit travel
- Watch for illness
- Review attendance and doctors notes policies
- Review pay issues with PTO and if out of PTO
- Encourage sick employees to remain home
- Continue to monitor the situation
- Create “scalable” plans based on CDC guidance
- Create alternate schedules
- Implement social distancing

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Contingency plan based on alert level

- Work remotely
- Change work schedules
- Reduce/eliminate travel
- Identify illness at the door
- Environmental
 - Seating arrangement and social distancing
 - Close off public areas such as dining areas
 - Heating and cooling – air flow and additional filtration
 - Cleaning crew instructions
 - Provide hand and equipment sanitization



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Develop checklist

- Who, what, when, where
- 5 checklist areas
 1. Planning/Preparation
 2. Prevention
 3. Prioritization
 4. Closing
 5. Reopening

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Communications

Elements of communications to employees:

- Expectations concerning business travel
- Alternatives such as video teleconference?
- Expectations concerning in person meetings and events
- Request employees to notify the employer of personal travel
- Circumstances when employees will be sent home
 - ☐ will they be expected or allowed to work remotely?
 - ☐ will the employer provide the necessary equipment for employees to work from home (if feasible)?
 - ☐ if they cannot work from home, will they be paid?

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Communications

Elements of communications to employees (cont.):

- Encourage employees to stay home if ill
- Designate a person or team to advise employees on the steps the employer is taking, employee actions to reduce exposure, and to answer questions.
- Information about hygiene and products to be provided by the employer
- The employer's routine environmental cleaning

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Communications

Elements of communications to employees (cont.):

- Educate on the disease
 - Low risk of infection
 - Even with the illness, most people recover quickly
 - History of coronavirus
 - Symptoms of virus
 - At risk population
- Emphasize prevention
- Inform employees of plan, steps you are taking, and any policy changes
- Frequent and transparent communications

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Communications

Elements of communications to employees (cont.):

- Inform employees of changed/suspended policies during pandemic
- Communicate changes to PTO, leave of absence, FMLA policies
- Anticipate employee fear and anxiety, rumors, misinformation
- Identify community and medical resources
- Train managers
- Office closure announcement as needed

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What if employees refuse to travel for work?

- Employees who are reluctant to travel to destinations that have seen outbreaks of coronavirus should be allowed to participate in meetings via Skype or telephone conference rather than traveling to locations that could pose a risk of exposure to coronavirus.
- OSHA's General Duty Clause requires employers to mitigate or eliminate workplace hazards that could cause serious harm to employees. Requiring employees to travel to destinations where there is a significant risk of becoming ill with coronavirus may violate OSHA's General Duty Clause.

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What if an employee or visitor contracts coronavirus?

- If an employee becomes infected at work or from a work-related activity the employer should report the illness to its workers' compensation carrier.
- Quarantine employees who might have been in contact for two weeks.
- Consider closing business for period of time
- If an employee has been in contact with someone who is diagnosed with CV they should not come into the office.
- Post notice of exposure to employees with name withheld, but indicate steps to mitigate

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OSHA

- Guidance issued for employers to prevent occupational exposure to CV. OSHA advises employers:
 - Recommend employees take personal measures to prevent exposure (e.g. hand washing)
 - Assess hazards to which workers may be exposed
 - Evaluate risk of exposure
 - Develop an infectious disease preparedness and response plan, including policies and procedures for prompt identification and isolation of sick employees
 - Select, implement and ensure employees use controls to prevent exposure such as social distancing, hygiene and cleaning supplies

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OSHA continued

- If an employee is infected with CV at work, the illness is a recordable illness, if it meets one or more criteria:
 - ☐ Death
 - ☐ Days away from work
 - ☐ Restricted work or transfer to another job
 - ☐ Medical treatment beyond first aid

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Can an employer send home all sick employees?

- Employees who are suffering from a cold, influenza, or cough could be suspected to be suffering from coronavirus. Treating an employee evidencing any symptoms of coronavirus as if they have coronavirus, particularly if the individual is not known to have been exposed, could trigger a claim of “regarded as” disability discrimination.
- Ill employees can be questioned about their symptoms.

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Can employers require employees who have visited destinations where coronavirus has occurred be tested?

The Americans with Disabilities Act (ADA) prohibits an employer from making a medical inquiry or requiring medical examinations of employees, except in very specific circumstances. In general, the ADA prohibits employers from requiring medical examinations unless they are job-related and consistent with business necessity, such as if the employee poses a direct threat to others.

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Can employers require employees who have visited countries where coronavirus has occurred be tested?

Now that coronavirus has been declared to be a pandemic, it may be permissible to make certain medical inquiries, such as taking the temperature of an employee who is showing coronavirus symptoms to determine if they have a fever. A pandemic may make coronavirus a “direct threat” under the ADA.

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Can employers refuse to allow employees exposed to coronavirus to come to work?

If an employee or an employee's family member has been exposed to coronavirus or travelled to a destination where coronavirus has spread, the employer can require the employee to work from home or to take leave if working from home is not possible. Where an employee will not be able to work at home, the employer must have a reasonable objective belief that the employee poses a danger to the workplace.

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Work from Home (WFH) arrangements

- Establish clear policy
- Which positions can use WFH
- Infrastructure
- Clear hours and availability
- Communication method (Skype, email, Jamm, Zoom, google handouts, etc)
- Regular and ongoing communication
- Ground rules
- Expectations and accountability
- Cybersecurity issues
- Supplies and reimbursement for out of pocket expenses

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What if the employer does not allow working from home?

If employers normally prohibit employees from working remotely but decide to allow it because the employee is exhibiting symptoms which could be coronavirus, they should document the unique circumstances of the current situation and the reasons why working remotely is being allowed.

Establish an "end date" of work from home arrangements which may be revised and updated as needed.

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What if schools or daycares close and work from home is not an option?

- Consider alternative scheduling of staff to minimize contact with others
- Online skill training / development opportunities
- Offer value add activities

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Can employers question their employees about their recent travel for personal reasons?

- Employers can request that employees inform them of their personal travel plans. Some employees may not cooperate.
- Employers should consider asking employees to notify them of business and personal travel plans of family members and/or others who live with them.
- Employers may not mandate employees cancel personal travel or vacation plans or may be liable for cancellation fees.

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Can an employer require that an employee use paid time off to stay home for quarantine, or take unpaid time off?

Employers have differing views when an employee has not been diagnosed with or exposed to coronavirus.

- If an employee must take PTO or unpaid leave, will the employee be less likely to voluntarily stay at home?
- If a significant number of employees travel for work, it can be a hardship to pay them to sit home.
- Must comply with any applicable collective bargaining agreement.

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Can an employer require that an employee use paid time off to stay home for quarantine, or take unpaid time off?

Other considerations:

- Nonexempt employees do not need to be paid for time not worked.
- Exempt employees must be paid the entire weekly salary in a week in which they work more than a de minimis amount of work (minus deductions for PTO for days not worked).
- Employers may deduct pay from exempts for an entire day if the employee does no work and is off with personal or sick leave reasons.
- If exempt employees are responding to email or responding to calls from home, they are working.
- Coronavirus related absences may qualify for FMLA.
- Government may provide additional funding or requirements for paid time off during pandemic.

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If an employee is quarantined, are there limits to the information an employer can share with others?

If an employee is confirmed to have coronavirus, employees should be informed, without disclosing the identity of the employee. The ADA prohibit employers from disclosing an employee's personal medical information to others who do not have a need to know.

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Can an employer ask an employee about their health in order to determine if quarantine is necessary?

Employers can ask ill employees if they are experiencing coronavirus symptoms such as fever, shortness of breath and coughing. The responses to such questions should be treated as confidential medical information, maintained in a file separate from the personnel file, to which access is limited to those who have a need to know.

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Can an organization be held liable if employees or customers contract coronavirus while working or visiting the organization?

Probably not – it would be very difficult for an individual to prove that they became ill directly as a result of working or visiting the organization.

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Resources

- General information from CDC
<https://www.cdc.gov/coronavirus/2019-nCoV/summary.html>
- Poster
<https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>
- General information from MN Dept of Health
<https://www.health.state.mn.us/diseases/coronavirus/index.html>
- For health care providers
<https://www.health.state.mn.us/diseases/coronavirus/hcp/index.html>
- OSHA
https://www.osha.gov/Publications/influenza_pandemic.html
- World Health Organization
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

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Wrap up and questions



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