

COVID-19 and the Workplace: What Employers Should Know

Although the number of confirmed cases of novel coronavirus (COVID-19) in the United States is low in comparison to many other countries, the Centers for Disease Control and Prevention (CDC) warns that COVID-19 is likely to continue to spread. Many local health authorities are now requesting that those who have come into contact with a confirmed case of COVID-19 self-quarantine for up to two weeks to ensure that they have not contracted the virus as well.

In light of this, employers of all sizes must consider how the virus could affect their workplace, the health of their employees, and their ability to carry on operations. While doing so, however, employers should ensure that their plans comply with employment laws.

OSHA The Occupational Safety and Health Act's (OSHA) general duty clause requires employers to provide employees with a workplace free from recognized hazards that cause or are likely to cause death or serious physical harm. Employers can do their part by educating employees about COVID-19 and curbing the risk of employee exposure.

To prevent exposure, the CDC recommends that employers encourage employees and others to stay home if they are feeling sick. Employers should place posters regarding proper hand-washing techniques and coughing and sneezing etiquette throughout the workplace. To minimize the need to touch shared surfaces—such as door knobs, handles, and sinks—employers should provide paper towels nearby open waste baskets for easy disposal. In addition to making these changes, hand sanitizer and disinfecting wipes should be readily available in the workplace.

OSHA is likely to have more specific guidance for certain types of workplaces and industries. For example, OSHA may mandate that [employers that are health care providers take unique precautions](#).

ADA. Because the Americans with Disabilities Act (ADA) limits an employer's ability to require medical exams and ask disability-related questions, employers must be cautious before asking employees or applicants about their health. Although COVID-19 is unlikely to be considered a "disability," employers should be mindful that it is more likely to affect persons with disabilities, such as those with compromised immune systems. This may result in additional reasonable

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accommodation requests designed to limit exposure to the virus.

Notably, the ADA does not prevent employers from asking non-disability related questions. Therefore, an employer would be able to ask about an individual's prior travel to areas where COVID-19 is more prevalent. During prior pandemic outbreaks, the Equal Employment Opportunity Commission (EEOC) has made clear that an employer does not violate the ADA by asking a sick employee to go home.

Wage & Hour Issues. Employers may want to encourage employees to work from home, especially if employees are not feeling well or were recently traveling. If non-exempt employees work from home, employers must be sure the employees are accurately recording their working time. To facilitate compliance, employers may want to redistribute or update their timekeeping policies.

Additionally, the FLSA places restrictions on an employer's ability to take deductions from salary for absences due to sickness. Exempt employees generally must be paid their full salary in any workweek in which they perform any work. Should an employer close mid-week in an effort to stop the spread of the virus, it cannot make a *pro rata* deduction from employee salaries without the risk of losing exempt status for those employees.

FMLA/Leaves of Absence. If an employer is covered by the federal and/or Wisconsin Family and Medical Leave Act (FMLA), eligible employees are able to take job protected leave if either they or a family member have a "serious health condition." Depending on the severity, contracting COVID-19 may qualify. Therefore, employers should be prepared to respond to leave requests, keep track of employee leave, and issue appropriate notifications. Note that an employer must notify an employee of his or her eligibility to take FMLA leave if the employer has reason to believe an absence is for an FMLA qualifying reason. Although federal FMLA allows employers to require employees to apply their paid time off to any job protected leave, employers must check to see if this practice is allowed under state law. For example, Wisconsin FMLA only allows employers to give employees the *option* to use paid time off.

Employers that are not covered by state or federal FMLA, or who have an employee who is not eligible for FMLA, should consider giving job-protected leave to any employee who needs to take time off due to COVID-19. If employers do give employees a leave of absence, they should make sure that they have a policy in place and uniformly apply that policy.



NLRA. Employers also need to adopt proactive strategies to address concerns about their workforce and protect whistleblowers. The NLRA protects the right of employees to engage in concerted activity for their aid and protection. This may include making complaints about whether their employer is taking adequate measures to protect employees from the threat of COVID-19 in the workplace.

COVID-19 is also likely to affect attendance, sick leave, travel, and other workplace policies. If you would like to update your company policies or have any questions about how to prevent and prepare for COVID-19, please reach out to a member of the [Labor and Employment](#) team or your Reinhart attorney.

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