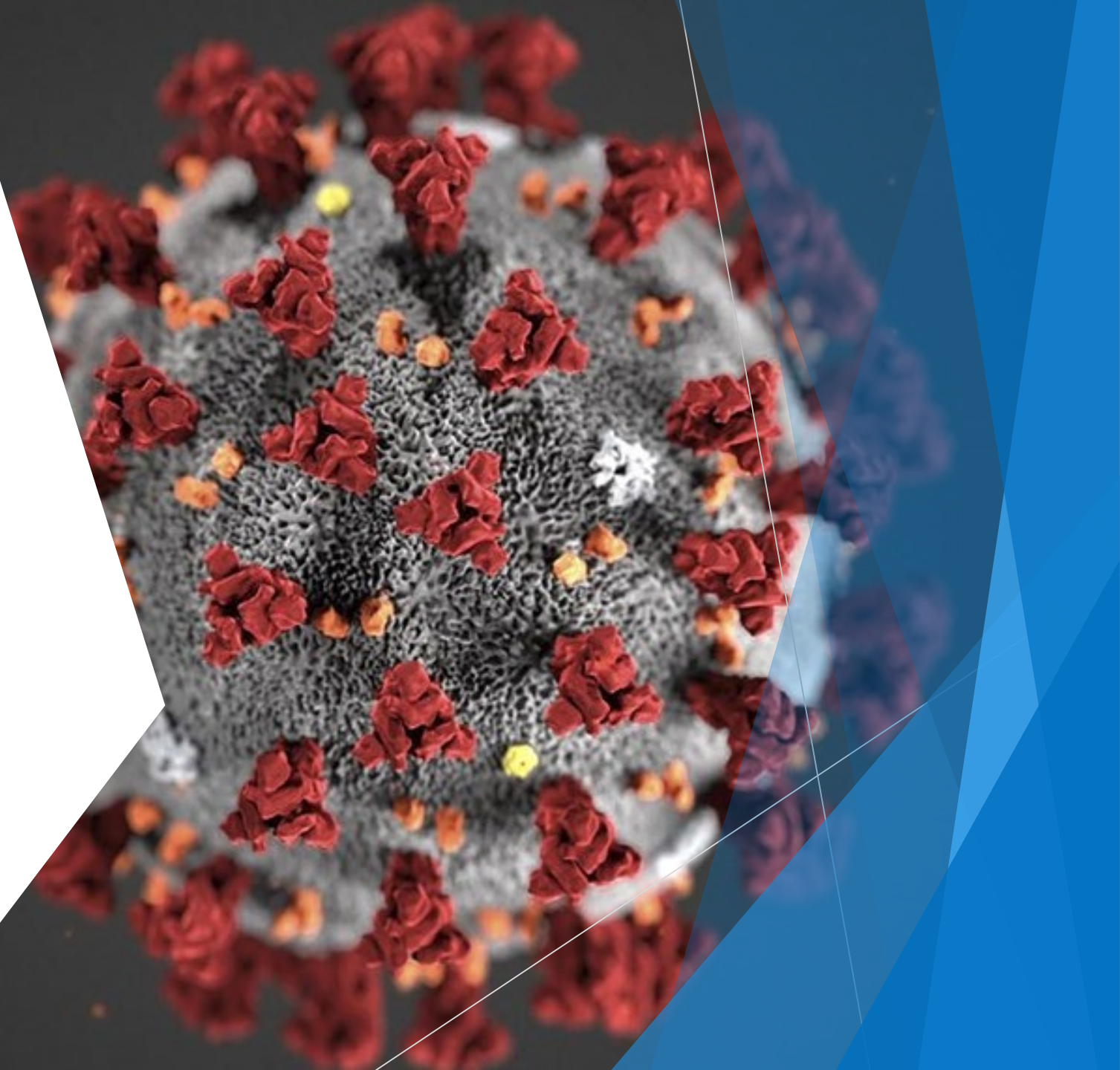


Navigating the Coronavirus: Best Practices For Employers

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Agenda

Employers, Human Resources and in-house counsel are grappling with how to respond to the novel Coronavirus (COVID-19).

This webinar provides employers with initial guidance on how to address the impact of the virus on the workplace and what employers can and cannot do.

This is a rapidly developing issue. You should continue to consult with your employment lawyer and monitor the advice of the Center for Disease Control as circumstances change.



LANER MUCHIN

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What is COVID-19?

- ▶ A respiratory illness.
- ▶ Symptoms include: Fever (100.4 degrees or higher), shortness of breath, and cough.
- ▶ Symptoms may appear 2-14 days after exposure.
- ▶ An individual may be contagious while experiencing no symptoms.



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Where is COVID-19?



- ▶ Over 100 countries have reported cases.
- ▶ Over 1,000 cases in the United States.
- ▶ COVID-19 initially spread from person to person in parts of the United States.
- ▶ Recent reporting suggests that there may now be community spread. “Community spread” means some people have been infected and it is not known how or where they became exposed.
- ▶ Risk of infection with COVID-19 is higher for people who are close contacts of someone known to have COVID-19, for example healthcare workers or household members.
- ▶ Other people at higher risk for infection are those who live in or have recently traveled to an area with ongoing spread of COVID-19 or have come in close contact with someone who is confirmed to have COVID-19.

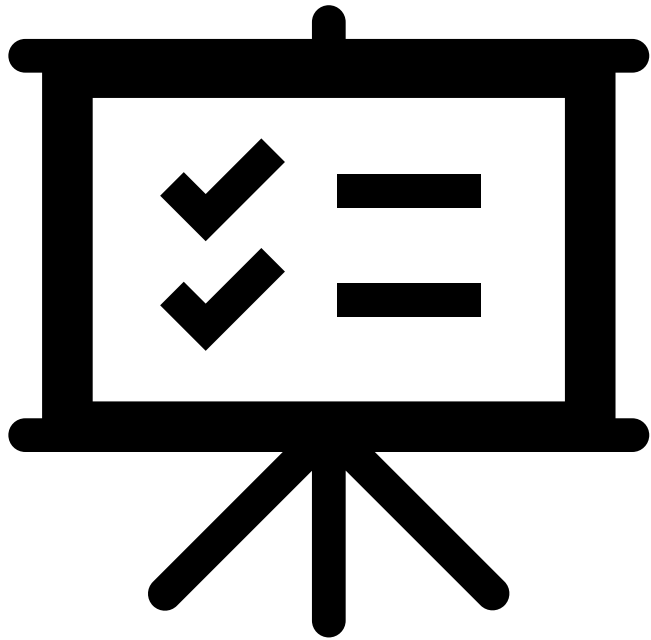




What *Not* To Do

Do Not Panic - Employees and employers are rightly concerned about this issue. However, do not panic. Not everyone who has flu-like symptoms has COVID-19.

An overreactive response by an employer could spark unnecessary panic in the workplace, disrupting operations.



Be Prepared

Have a preparedness plan - Create (or review) an operations plan to be prepared and involve all necessary stakeholders (*i.e.*, HR, operations, facility/maintenance, legal, etc.). At a minimum, the plan should:

- designate a point person to make HR and operational decisions.
- have a process in place of how to address an employee who is suspected of having exposure or symptoms and determine who will make the decision of sending an employee home or prohibiting the employee from working.
- contain a communications protocol to notify employees of possible exposure, including who will communicate, the method and where employees can get more information.
- have a communication strategy to handle press inquiries or customer/client inquiries.

Your plan:

address whether to limit business travel or cancel any upcoming conferences or large gatherings (consider phone or video conferences in lieu of in person meetings, even if individuals are in the building). Avoid gatherings of 250 people or more.

identify how to handle increased employee absences due to illness (or suspected illness), school closings, disruptions in mass transit or employees who refuse to work because they are scared.

identify positions that are eligible for work-from-home arrangements on either a temporary or long-term basis.

prepare for how the business will continue to operate if there is mass absenteeism, especially the absence of key employees.

Your plan:

determine whether furloughs or temporary layoffs may be necessary in the event of a reduction in business, supply, etc., and how will they be implemented.

you are not required to report actual or possible infections to public health officials; however, state and local public health agencies have hotlines to make inquiries or voluntarily disclose infections at work. Have this information handy.

OSHA does not require you to take more than reasonable steps to protect employees. Most employers do not have to provide face masks or gloves. Your obligations is industry-specific, so be sure to consult counsel regarding OSHA requirements that apply to your business.

determine whether exposure at work or an infection from an employee is reportable to your workers' compensation carrier.



Be Proactive

Strongly encourage employees to take proactive measures to prevent infection:

- ▶ make hand sanitizer and tissues available.
- ▶ inform employees of the recommendations of health care professionals, such as:
 - ❖ washing hands often with soap and water for at least 20 seconds or use an alcohol-based hand sanitizer if soap and water are not available.
 - ❖ avoid touching eyes, nose, and mouth with unwashed hands.
 - ❖ covering your mouth and nose when sneezing or coughing, but not with your hands. Discard tissues after each use.
- ▶ cleaning and disinfecting frequently touched objects and surfaces with recommended products. Work with your building's facilities department to confirm that they are taking appropriate steps to adequately clean and disinfect frequently touched objects, such as door handles, bathrooms and kitchen areas.
- ▶ Maintain flexibility with employees on where and how they work.
- ▶ Consider staggering work schedules or lunch hours to avoid a large number of employees in one place.



What You Can and Cannot Do

If you believe an employee may have COVID-19, you CAN:

- ▶ ask if the employee has a fever, cough or shortness of breath.
- ▶ “screen” employees who may be at high risk of infection and ask questions that would help determine risk of infection or exposure (i.e., persons who traveled to an area with an outbreak or people who may have been exposed someone with COVID-19).
- ▶ separate and send home employees who appear to have acute respiratory symptoms or have other factors to suggest high risk for infection (i.e., travel or exposure to another person with COVID-19).



What You Can and Cannot Do (cont'd)

If an employee is confirmed to have COVID-19, you CAN:

- ▶ require the employee to provide medical documentation from a health care provider clearing the employee to return to work.
- ▶ inform employees that there is a risk they have been exposed to COVID-19 in the workplace but maintain confidentiality as to the person who may have exposed them.
- ▶ discuss possible accommodations with the employee, such as working from home, leave of absence, etc.





If An Employee Cannot Work:

- ▶ Designate time off as FMLA if applicable (employee or family member).
- ▶ Consider whether any other paid or unpaid leave policies apply, such as sick, vacation/PTO or personal leave (for employees not eligible for FMLA), and whether you will require employees to use paid sick or vacation/PTO.

A photograph of a white mug with a straw, a pair of glasses, and a box of tissues on a table. The background is dark, and the foreground is a light-colored surface.

Paying Employees for Work

- ▶ Hourly employees must be paid for all hours worked.
- ▶ Review legal requirements regarding whether exempt employees must be paid their salary. For example, if you require an exempt employee not to work, then they must be paid. If an exempt employee does not perform any work for the entire workweek, it does not have to be paid.



You CANNOT

Discriminate - Do not single out employees based on national origin, race, ancestry or citizenship status. Enforce harassment policies where other employees may make comments or jokes about an individual's national origin, race, ancestry or citizenship status.

- ❖ You cannot prohibit employees from traveling to destinations for non-business reasons, but you may encourage them to check the Centers for Disease Control's Traveler's Health Notices before making travel decisions.
- ❖ You can ask employees who have traveled to areas with COVID-19 outbreaks if they have any symptoms.

You CANNOT (cont'd)



- ▶ **Make disability-related inquiries** - You may not make medical inquiries of disabled employees to determine whether they have a compromised immune system and are more susceptible. However, you may inquire why an employee has called off from work.
 - ❖ You can ask if the employee has been diagnosed with COVID-19 or symptoms (e.g., fever, shortness of breath, or cough).
 - ❖ If an employee with a disability voluntarily discloses their disability because they are concerned that they are susceptible, you must engage in the interactive process (determine what if any accommodation is appropriate under the circumstances) and keep this information confidential.

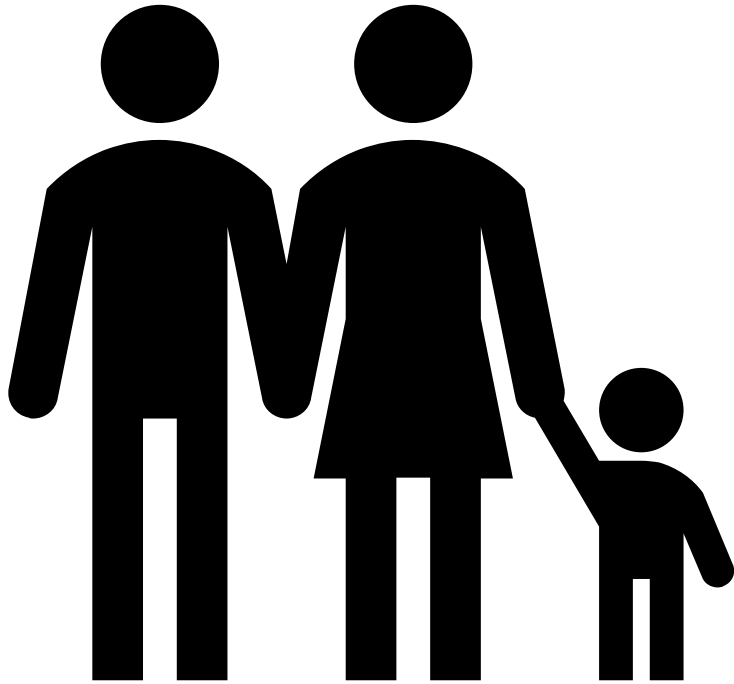


You CANNOT (cont'd)

- ▶ **Require employees to take certain actions -**
You may not require that your employees get a flu shot or require them to submit them to medical testing if they have no symptoms and are not at high risk.



Grey Areas



- ▶ When should an employee be sent home and for how long?
- ▶ When to require a doctor's note?
- ▶ When and what to communicate to other employees?



- ▶ Discuss these issues with union representatives now.
- ▶ Check your collective bargaining agreement provisions on attendance policies, leaves of absence, medical testing, furloughs, closure of facilities or departments, and other related provisions before making decisions that would impact the union employee's terms and conditions of employment.
- ▶ Forced time off without pay may be considered a disciplinary suspension and give rise to a grievance.

For Employers Of Unionized Employees



Reliable Sources

There is a lot of misinformation out there and assumptions being made. You should make decisions based on reliable sources and follow recommendations from public health professionals.

Several Government Agencies Have Created Guides With Helpful Information On These Issues:

- ▶ **Equal Employment Opportunity Commission:** What You Should Know About the ADA, the Rehabilitation Act and the Coronavirus
- ▶ **Equal Employment Opportunity Commission:** PANDEMIC PREPAREDNESS IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT
- ▶ **Centers for Disease Control and Prevention:** Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19), February 2020
- ▶ **State of Illinois:** Coronavirus Disease 2019 (COVID-19)
- ▶ **City of Chicago:** COVID-19: Guidance for Businesses and Employers

❖ *This Guidance is not legal or medical advice and should not be relied upon as legal or medical advice. You should contact an attorney or medical professional before taking action on the information contained in this Guidance*



Several Government Agencies Have Created Guides With Helpful Information On These Issues (cont'd):

- ▶ Occupational Safety and Health Administration: COVID-19
- ▶ Occupational Safety and Health Administration: Guidance on Preparing Workplaces for COVID-19
- ▶ U.S. Department of Labor: COVID-19 or Other Public Health Emergencies and the Family and Medical Leave Act Questions and Answers
- ▶ U.S. Department of Labor: COVID-19 or Other Public Health Emergencies and the Fair Labor Standards Act Questions and Answers

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A low-angle, upward-looking photograph of several modern skyscrapers with glass and steel facades. The buildings are arranged in a way that creates a sense of height and scale, with the sky visible in the background. The image is split horizontally by a blue banner.

QUESTIONS