

Coronavirus: What Employers Need to Know

Avoid these discrimination liabilities and give employees the information they need to stay well



By Kathy Gurchieck February 5th, 2020

The spread of the novel coronavirus to 24 countries has employers searching for ways to protect their workers and organizations during what the World Health Organization has declared a global emergency.

The virus was first reported Dec. 31 in Wuhan, Hubei province, China. There have been more than 20,000 confirmed cases since then; the vast majority of the cases are in China. There is no vaccine.

Employers worried about the virus will want to help employees stay clear of it. But be aware of unwittingly discriminating against people.

The virus's origination in China, at a time of year when many people travel to China or had relatives from there travel to the U.S. to celebrate holidays, could cause employers to wrongly presume that people who are Chinese have a higher risk of exposure to the virus, said employment attorneys Melissa Peters and Alka Ramchandani-Raj of Littler Mendelson.

They warned that employers need to be careful about making such presumptions "and be cautious that they treat all employees the same."

"They need to also be careful when they hear things in the workplace that may seem to target those members of a specific protected class and take proper action, including reiterating and reviewing anti-discrimination, harassment, bullying and retaliation policies and conducting investigations where needed," they told *SHRM Online*.

Be aware, too, of not discriminating against people with the virus. Attempts to make sure employees are well-enough to return to work need to be legally compliant.

"A fitness-for-duty form may need to be modified because it needs to pass the 'job-related and consistent with business-necessity test,' and most generic forms will not pass this test in accordance with exposure

to the coronavirus," they said.

"The fitness-for-duty form should focus on the direct threat only. Additionally, the employer should take measures to ensure it does not request medical diagnosis, but rather whether the employee can return to work."

Travel

Employers with workers based in China or who travel there should note that the U.S. Department of State issued a "do not travel" advisory to the country on Jan. 30. American Airlines, Delta Air Lines and United Airlines announced Jan. 31 they were suspending service to China after the state department elevated its travel advisory to warning level 4, its most serious ranking. The length of the flight ban varies with the airline, according to *The New York Times*. Airlines in other countries, such as British Airways and Lufthansa Group in Germany, have reduced or suspended flights to China.

Meanwhile, screenings have been instituted at 11 U.S. airports for travelers returning from China. Quarantines also are in effect, according to Alex Azar, Secretary of Health and Human Services and chairman of the president's task force on the novel coronavirus. He announced that effective Feb. 2, U.S. citizens returning home from the Hubei province in China will undergo a mandatory quarantine of up to 14 days.

Additionally, any citizen returning from the rest of mainland China will undergo a health screening at selected ports of entry and up to 14 days of monitored self-quarantine.

"Where there is exposure and the person has contracted the virus, employers also need to review and determine if the employee is entitled to some other personal leave, [Family and Medical Leave Act] or state equivalent leave, and potential workers' compensation," Peters and Ramchandani-Raj pointed out.

It's important that employers communicate quickly with employees during an epidemic, said Will Eadie, vice president of alliances at WorkJam, digital workplace platform with headquarters in Montreal.

Some large employers, such as Levi Strauss & Co., Starbucks and McDonald's, have closed or are planning to close their offices and worksites in China, *The Wall Street Journal* reported Feb. 3.

Pointing to restaurant managers as an example, Eadie said they "must be able to react quickly to potential location closures and concerned employees. To avoid further confusion and panic, restaurants must be prepared with the right strategy and tools to keep staff informed about updates to location hours, staffing, scheduling, and any new health and safety training."

Creating a direct line of communication from the head office to frontline workers, often by apps or other technology is the simplest and fastest way, he noted, "to ensure staff are well-informed of these changes."

Health and Safety Measures

There were 11 confirmed nonfatal cases of the virus in the U.S. as of Feb. 3—six in California, two in Illinois and one each in Arizona, Massachusetts and Washington state. The health risk to individuals depends on duration of exposure, according to the U.S. Centers for Disease Control and Prevention (CDC).

Health care workers who interact with patients who have the virus, for example, have an increased risk of infection. But "the immediate health risk from 2019-nCoV is considered low" for members of the general American public who are unlikely to be exposed to the virus, the CDC said.

The virus is similar to the common cold in that it is spread by droplets that often are transmitted when a person coughs or sneezes. The virus has an incubation period of at least two weeks, and health authorities believe infected people can spread the virus before they begin to show symptoms, increasing the likelihood that they will pass the illness to others.