

**Beyond Handwashing:
Coronavirus from an Employment Law and Human Resources Perspective**

Given the challenges employers are facing when responding to the coronavirus, employers must be prepared to do the following: (a) respond to changes in the needs for labor based upon the employer's business being impacted by the virus; (b) deal with increased employee absences due to sickness, sick family members, quarantining, school closures and fear; (c) manage fear and distraction in the workplace; and (d) minimize the spread of the disease in the workplace.

Business Impact

The first thing a Company should do is assess how the virus may impact the Company's business or certain aspects of the business. Clearly and calmly assess what the negative impact would most likely be beyond the likely overall economic decline. While an extensive analysis is outside of the scope of this guidance, businesses are encouraged to research how past outbreaks of disease have impacted their industry and what experts anticipate the likely effects will be on their particular industry. After assessing the likely impacts on your current business model, assess whether there are any opportunities.

Businesses should be cautious as to relying on their business interruption insurance to cover losses. While questions of coverage are ultimately determined by the terms and conditions of the policy, such policies may very well not cover losses caused by infection. It is noted that there will be pressure to cover such losses even in the face of explicit exceptions in policies.

Businesses are also encouraged to review their union contracts now to see if a force majeure clause exists that covers the virus which gives the employer more flexibility. In either case, it often makes sense to proactively speak with union representatives about making exceptions to restrictions concerning coverage and absences.

Finally, if you have over 100 employees and are in an industry that has already suffered significant losses and is expected to suffer more, your company should have the WARN requirements on hand (see our summary on our COVID-9 Advisory Group Home Page).

Employee Absences

At minimum, there will be (and already has been) an uptick in employee absences associated with sickness, sick family members, quarantining, school closures and fear. Companies should consider the following coverage strategies:

(a) **Knowledge sharing.** Employers should instruct employees with unique knowledge to share the knowledge with another colleague – or at least document the knowledge on a spreadsheet. Employees with client and vendor relationships should be sure the relationship is introduced to a

second person at the company. Cross train employees now so that you can find internal coverage easier. Remember – salaried employees are better to use for this extra work to avoid incurring additional labor costs.

(b) **Remote Work.** For employees who do not have to be on-site in order to work, employers should be sure the employees can seamlessly work from their home. Test employee remote use by have IT run reports to show who successfully works from home already and train the rest. To the extent that you could have hourly employees work from home that currently punch a clock, be sure you have a policy regarding remote and timekeeping in place.

(c) **Survey employees now (requiring employee name).** The EEOC has approved a survey of the following nature:

Would you be unable to come to work because of any of the following reasons:

- If schools or day-care centers were closed, you would need to care for a child;
- If other services were unavailable, you would need to care for other dependents;
- If public transport were sporadic or unavailable, you would be unable to travel to work;
- You believe that you or a member of your household would fall into a category identified by the CDC as being high risk for the coronavirus or which you feel may be identified as being at high risk for serious complications from the coronavirus resulting in public health authorities' recommendation for you not to come to work.
- There are other reasons you feel you would be unable to come to work

Answer: YES NO

Using this information, you can further fine tune your coverage strategy.

(d) **Fill Essential Positions.** If you have open requisitions for positions that you will need more due to the virus – IT support for remote work, the generalist that can cover a lot of employees – fill the position now. Have a recruiter on call in case you have a need later on.

Control Fear and Distraction

(a) **Minimize Distraction.** Implement or enforce policies against browsing the web during working time – even to check the latest coronavirus news – and redirect conversations centering around the coronavirus. Remember to keep information employees' tell you about their medical conditions confidential.

(b) **Proactively avoid the “Snow Day” mentality.** Make clear that the impact of the virus on employees will be to (i) work more to deal with coverage issues; and (ii) work differently to account for remote work. Avoid announcements that speak to slowed productivity.

(c) **Communicate to employees in a positive and measured way.** Focus not just on how to avoid the virus but being prepared to work if the virus is more widespread. Remind employees

that if they see a co-worker cough or look ill in the workplace, that they should remember that their co-worker may have a documented non-communicable medical condition, such as asthma or allergies, that causes the symptoms. Remember employee complaints about your actions and communications concerning the coronavirus may be protected by Section 7 of the NLRA (even for non-unionized employees).

Minimize Spread of the Virus in the Workplace

Employers should think about minimizing the spread of the virus in the workplace. From a legal perspective, there is little risk of failing to take steps to minimize the spread of the virus at work aside from a workers' compensation claim and having to record workplace spread for OSHA log purposes. The real incentive for employers to try to minimize the workplace spread of the virus is a business one – if everyone gets sick at the workplace, absences will not be able to be covered and it may detract from business. Keep in mind local laws and new orders will be affecting employer obligations going forward.