

CORONAVIRUS

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Coronavirus Guidance for Employers: Pandemic Declaration and Government Action

COVID-19 (commonly referred to as the “coronavirus”) was declared a global pandemic by the World Health Organization (“WHO”) on March 11, 2020, and continues to impact businesses and public life around the world. The U.S. Center for Disease Control and Prevention (“CDC”) is monitoring the status of the coronavirus, and various state and local governmental agencies are issuing states of emergency and quarantine directives. The virus continues to spread without containment, creating a host of new real-time issues for employers to address as the general duty to provide a safe working environment has significantly increased.

WHAT IS A PANDEMIC?

WHO has described a pandemic as the worldwide spread of a new disease. For a general discussion of what constitutes a pandemic, review WHO’s general guidance [here](#).

What did WHO say about the COVID-19 pandemic?

WHO’s director general made his remarks in a briefing to the media about the pandemic and, among other things, outlined general steps that countries should take, which are available [here](#).

WHAT IS THE LATEST FEDERAL RESPONSE TO COVID-19?

On March 11, 2020, President Trump issued a ban on travel from Europe (minus the United Kingdom) to the United States beginning Friday, March 13, 2020, at midnight.

What about workers who have traveled to Europe?

The ban does not apply to United States citizens or permanent residents. The situation is very fluid and the particulars of how U.S. citizens and permanent residents will be allowed to return back to the United States are being determined by agencies of the federal government.

WHAT SHOULD WE DO AS AN EMPLOYER?

For guidance on how employers can address these complex workplace situations, please refer to the following client alerts:

- [Guidance for Employers to Address Coronavirus in the Workplace](#)
- [How to Approach Coronavirus-Related Workplace Scenarios](#)

Does the declaration of a pandemic change an employer's duty to provide a safe workplace?

No, employers have the same basic responsibilities and duties to the workforce. The Occupational Safety and Health Administration ("OSHA") just released additional standards and directives that can be found [here](#). According to OSHA, COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all of the following are met:

1. The case is a confirmed case of COVID-19 (see [CDC information](#) on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);
2. The case is work-related; and
3. The case involves one or more of the general recording criteria: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

For additional information, refer to the CDC's updates on guidance for businesses [here](#).

What can an employer do to monitor the workplace for employees who may be sick?

Just because a pandemic has been declared, does not mean that an employer's obligations concerning non-discrimination in the workplace is excused. However, post-pandemic Equal Employment Opportunity Commission ("EEOC") guidance provides more flexibility for employers to act to protect the general duty of safety in the workplace. For instance, now employers can screen an employee's temperature for sign of a fever before allowing them into the workplace. Refer to the EEOC's guidance on planning in the workplace in the event of a pandemic, including how to address medical issues relating to testing, [here](#).

What should an employer do if they want to implement testing?

1. Make sure all employees clock in first. They must be paid for the time waiting for and being subjected to screening procedures.
2. Conduct the screening in a separate and private room.

3. Practice high-level hygiene etiquette and sanitization.
4. Consider using a certified health professional (services through workers' compensation carrier may be an option).
5. If an employee registers a fever of 100.4 degrees or higher, immediately send the employee home (with pay for the balance of the work day at a minimum).
6. Ask the employee where they have been in the building the day of and the day before when they were at work.
7. Deploy immediate cleaning of testing room and the employee's work station if this area has not been cleaned prior to their last contact.
8. Tell the employee that they should consider being tested and speak to a health professional immediately. Have general guidance to provide the employee on next steps from the CDC.
9. Determine whether this is a medium to high risk situation that triggers a 14-day self-quarantine.
10. If not, ask the employee to call or e-mail employer management with their temperature later in the evening (which is only reliable if no fever reducing medication has been taken).
11. Call the employee and explain the guidelines for returning to work. The employee must be fever-free without medication for at least 24 hours.
12. Determine whether this will be a situation for short-term pay, PTO, or other leave. Balance the business cost of keeping sick employees out of workforce.

What communications should an employer issue to their workforce before implementing these measures?

- Clear and transparent communication is key. Employers should advise their employees that:
- As of a particular date, the company will be requiring mandatory temperature and symptom screenings of all employees before they start their shifts.
- While the company has no information that puts its facility at any heightened risk status, it is implementing temporary screenings.
- This does not change the company's approach to business, but does require some heightened screening to maximize safety and protection of the workforce.

- If an employee has an elevated temperature of 100.4 degrees or higher, they will be sent home immediately.
- If an employee takes his or her temperature at home and the temperature is elevated, the employee is encouraged to take the day off and stay home from work (with pay for the balance of the work day at a minimum).
- Employees will be allowed to use available leaves of absence to cover their time off work until they are fever-free for 24 hours without the use of fever-reducing medications.
- This does not mean the employee has COVID-19 or exhibited any other symptoms of the virus. There are many reasons for an elevated temperature.
- The company is taking this temporary step out of a true abundance of caution and as a preventative measure in response to the new governmental pandemic declarations.
- This is a rapidly evolving situation. All employees must continue to use proper hygiene etiquette at work and should report symptoms or direct questions to an appropriate contact at the company.

Most importantly, employers and employees should avoid fear and panic in the workplace. Employers should maintain clear and transparent communications with their employees and take the necessary precautions outlined by the CDC to keep themselves and their employees safe, and to protect their business going forward.

Blank Rome continues to advise on these and other emerging issues, draft communication and business continuity plans, and create and adapt disease prevention policies for employers of all sizes operating in the United States and globally. Please contact a member of the [Labor & Employment](#) group with any questions—no question is too small.

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