

CORONAVIRUS

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How to Approach Coronavirus-Related Workplace Scenarios

COVID-19 (commonly referred to as the “coronavirus”), a respiratory illness that was first diagnosed in Wuhan, China, in late 2019, has hit the United States. The World Health Organization (“WHO”) has declared the outbreak a public health emergency of international concern and the virus is being classified as an epidemic. With the spread of the virus, employers face a series of constantly evolving questions regarding their competing legal obligations to provide a safe workplace.

While the immediate risk of contracting COVID-19 in most workplaces remains low, many federal agencies, including the U.S. Centers for Disease Control and Prevention (“CDC”), have issued [specific guidance](#) for employers to respond to the disease. This client alert discusses recommended approaches and alternatives to specific situations affecting employees in the workplace. Implementation of these recommendations may need to be tailored to your particular business, with consideration being given to workplaces with employees who work in concentrated spaces; employees who have greater exposure on a daily basis with the public; employers who can easily transition to remote working arrangements; and employers who can afford to pay healthy employees to stay home.

WHAT SHOULD AN EMPLOYER DO IF AN EMPLOYEE...

...is sheltering a self-quarantined person?

The CDC does not recommend testing, symptom monitoring, or special management for people exposed to asymptomatic people with potential exposures to the virus. These people are not considered to be exposed and therefore are categorized as having “no identifiable risk.” As a result, there are no extraordinary precautions that need to be taken other than those imposed on all employees, which is to stay home if they are feeling sick. Of course, employers can take extra precautions that they deem necessary.

...is exposed to a symptomatic person?

If the employee has no elevated risk of exposure, such as an underlying medical condition or is over 50, that person is considered to have no identifiable risk. As long as that person remains asymptomatic, the CDC does not recommend testing or restriction on movement, but simply continued self-observation for any symptoms.

...is exposed to a confirmed case but is asymptomatic?

This will vary from no identifiable risk to low risk to medium risk depending on the exposure.

Brief exposure: If an employee is briefly exposed to a confirmed case—meaning they did not come in close contact (within six feet) nor were they in proximity to the person in the same indoor environment, the CDC considers this to be no identifiable risk.

Exposure in the same indoor environment, but not close contact: If the employee was exposed to a confirmed case and was in the same indoor environment but not in close contact, they are considered low risk. Recommendation for low risk is to ask the employee to work remotely, if possible, and, if not possible, that employee should be asked to self-monitor.

Self-monitoring means people should monitor themselves for fever by taking their temperature twice a day and remain alert for cough or difficulty breathing. If they feel feverish or develop measured fever, cough, or difficulty breathing during the self-monitoring period, they should self-isolate, limit contact with others, and seek advice by telephone from a healthcare provider or their local health department to determine whether medical evaluation is needed.

Close contact with a confirmed case: If the employee was exposed to a confirmed case and was in close contact, like a household member, that person is considered medium risk. The CDC recommends those at medium risk remain at home—but not in close contact with the person who was diagnosed—and conduct active monitoring.

Active monitoring means that the state or local public health authority assumes responsibility for establishing regular communication with potentially exposed people to assess for the presence of fever, cough, or difficulty breathing.

...is symptomatic?

Employee should remain at home for 14 days from the time of exposure and engage in active monitoring.

...is diagnosed?

Offices are closing where someone in the working environment was diagnosed with COVID-19 despite the CDC stating that those employees who did not come into close contact with the infected employee remain at low risk. However, since it is often difficult in many workplaces to know who actually came into close contact with an infected employee, in an abundance of caution, companies are sending everyone home.

...refuses to work because of fear of contracting the virus?

Under the Occupational Safety and Health Administration (“OSHA”), the employer has a legal obligation to provide a safe and healthful workplace for employees. However, an employee is only entitled to refuse to work if they believe they are in imminent danger, which is defined as a danger that can reasonably be expected to cause death or serious physical harm. Assuming this employee is not in a high-risk category, they do not have the right to refuse to come to work without that imminent danger being present.

Of course, an employer should consider the reaction from their workforce in requiring employees to come to work even with an unfounded fear of infection, and devise a policy that makes sense for both their business and the welfare of their valued employees.

...wants to wear a face mask at work?

Since the CDC does not recommend that people who are well wear a face mask to protect themselves, face masks should only be worn by those who are showing

symptoms to protect others. Therefore, employers are within their rights to advise employees that they cannot wear a face mask while in the office. Face masks provide a false sense of security to the employee looking to be protected and alarms others who believe the employee wearing a face mask is sick.

However, as with all the recommended guidelines, employers need to consider their particular working environment and workforce. If employees want to wear a face mask despite the false sense of security, and it is clearly communicated that those doing so are seeking to protect themselves, and not because they are sick, then, employers may want to allow their employees to do so (especially in an office environment where they are not interacting with the public). In that event, an employer should issue a written policy that lets the employees know they are permitted to wear a face mask to protect themselves and reinforces that if they are sick they need to stay home.

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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