

New York Employer Tips for Responding to the Coronavirus

The recent outbreak of 2019-nCoV, a flu-like respiratory illness better known as the Coronavirus, is causing employers to ready themselves for a variety of responses to the spread of the virus. Human Resources professionals are seeking guidance on how to promote a safe and healthy working environment without violating the rights of ill or potentially ill employees. We have some tips to help strike the right balance.

Remind Employees about Reducing the Spread of Germs

While Coronavirus is making headlines, it is also cold and flu season. Many of the same steps that put a damper on the spread of those more common bugs can also reduce the chances of the spread of Coronavirus. Now is a good time to remind employees to:

- Wash your hands often with soap and water for at least 20 seconds. Use an alcohol-based hand sanitizer that contains at least 60% alcohol if soap and water are not available.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Avoid close contact with people who are sick.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently-touched objects and surfaces.

Consider Virtual Business Travel

While employers cannot prevent employees from traveling for personal reasons—even if the Centers for Disease Control (CDC) warns against it—they can cancel or postpone employee business travel. Employers should keep an eye on [CDC Coronavirus travel advisories](#), and decide whether alternatives to business travel to high-risk areas, such as videoconferencing, are a better option. If an employee expresses health-related concerns about business travel, the most prudent course of action is to postpone travel or pursue a travel alternative, if feasible.

Addressing Concerns About Employee Health

HR professionals are trained not to make health (or disability)-related inquiries, and that is certainly the correct rule of thumb. But employers may, upon a reasonable belief that an employee's health poses a "direct threat" to co-workers, take appropriate action. In 2009, in response to the H1N1 virus (better known as "swine flu"), the Equal Employment Opportunity Commission ("EEOC") issued [helpful guidance](#) on ensuring that employer pandemic preparedness complies with the Americans with Disabilities Act.

So what can you do if an employee shows up to work with a persistent cough and a runny nose and you are concerned that they may have the flu or Coronavirus? [The US Department of Labor's recent advice](#) (consistent with the EEOC's 2009 guidance): you can probably send them home, but tread carefully. Be sure to consider whether the employee will be entitled to leave such as New York City Paid Sick/Safe Leave or other leave provided by an employer's policy,

or FMLA or New York Paid Family Leave (or another State's equivalent) if the employee or a covered family member develops symptoms that would qualify as a "serious health condition." Also, be sure to even-handedly address requests that sick employees go home. Do not limit requests to older or pregnant workers, and avoid racial, national origin or other stereotyping.

If an employee travels to a high-risk Coronavirus area as determined by the CDC or other health organization, you may take reasonable measures to reduce the risk of transmission. However, travel-related inquiries should be based upon a belief that any employee traveled to a particular country, and not upon an employee's race or national origin. It is appropriate to inquire about potential risk of exposure, and to ask an employee who has traveled to an area to which the CDC advises against non-essential travel—currently China, South Korea, Iran and Italy—to not report to work for 14 days (currently the longest Coronavirus incubation period) after leaving the high-risk area or after any symptoms have resolved. When making symptom-related inquiries—which are permitted only when job-related or to address a reasonable belief that the employee poses a direct threat to the health or safety of co-workers—ask only general questions such as "are you experiencing any flu-like symptoms, such as fever, chills, cough, or sore throat?"

If an employer requests that an employee not report to work following travel, steps should be taken to minimize disruptions to the affected employee. An affected employee should be invited to work remotely and attend meetings telephonically or through videoconferencing when possible, and be provided with regular updates to reduce the chance that the employee feels professionally disadvantaged or "out of the loop" by being prohibited from reporting to work. Employers may wish to postpone meetings and projects with respect to which the employee plays an integral role, if operationally feasible to do so, to ensure that the employee does not misinterpret the temporary separation period as adverse. So long as the employee is otherwise available to work, they should be paid their regular salary without requiring the use of paid leave time.

In sum, employers should be guided by federal, state, and local public health assessments, communicate openly with employees, and minimize disruptions to employees who cannot report to work due to Coronavirus-related concerns.

Employee Requests to Stay Home

Employers may also receive requests from healthy employees who, out of an abundance of caution, would like to work from home or take leave to avoid even the possibility of Coronavirus exposure. Addressing such requests is challenging, particularly when remote work is feasible for some employees, but not others. The first step is to determine whether the request constitutes a request for a reasonable disability accommodation. If the request is made because an employee's personal health issues make them particularly susceptible to contracting Coronavirus or vulnerable to its effects, it should be treated as a request for an accommodation and addressed through the [cooperative dialogue process](#). Similarly, requests to work from home or take leave due to Coronavirus-related anxiety should be addressed through the cooperative dialogue process, with employers permitted to ask for reasonable documentation of such anxiety and the need for an accommodation.

If a request to take leave or work remotely is not an accommodation request, it may be addressed as an ordinary request for leave or to work remotely, and resolved in accordance with employer policy. Employers should expect that granting one employee's request to work remotely or take leave may lead to other similarly-situated employees making such requests, and should make clear that the arrangement will be re-assessed frequently to ensure that business needs can be met. Granting requests of those who ask first and denying later requests for operational reasons could trigger allegations of discriminations, if later requesters are members of a protected class and earlier requesters are not.

Closure Due to Public Health Emergency

The New York City Mayor or Commissioner of Health and Mental Hygiene could, if circumstances change, declare a Public Health Emergency and require certain businesses to close or certain employees not to report to work. Employers would of course have to comply with such directives. Moreover, employees unable to work due to such a declaration would be entitled to use Sick/Safe leave in accordance with New York City Paid Safe and Sick Leave Law and employer policies. While the law does not explicitly require that such leave be permitted if a non-City resident cannot report to work due solely to a local public health declaration in their place of residence, employers should consider permitting the use of leave pursuant to its policies in such circumstances to avoid unnecessary litigation risk. As a reminder, New York City employers must also permit employees to take Sick/Safe leave—generally at least five days per year—when the employee needs to care for their covered child whose school or child care provider is closed due to a public health emergency declared by the New York City Mayor or Commissioner of Health and Mental Hygiene, or in order for the employee (or a covered family member) to receive preventative care or obtain a diagnosis (as well as for all other permissible purposes under the Sick/Safe Leave law).

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Lisa E. Cleary

212.336.2159

lecleary@pbwt.com

Catherine A. Williams

212.336.2207

cawilliams@pbwt.com

Ryan J. Kurtz

212.336.2405

rkurtz@pbwt.com

To subscribe to any of our publications, call us at 212.336.2813, email info@pbwt.com or sign up on our website, <https://www.pbwt.com/subscribe/>.

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