



EMPLOYMENT LAW Q&A

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With the spread of the coronavirus, employers everywhere are looking for ways to continue business operations while keeping their employees safe. Below are some questions employers may have regarding workplace safety, workers' compensation and OSHA if such situations arise.

WORKPLACE SAFETY

Can an employer ask an employee to stay home or leave work if they exhibit symptoms of COVID-19?

- Yes. During the H1N1 pandemic in 2009 the EEOC indicated that advising employees to go home is not disability related if the employee exhibits symptoms like the H1N1. The EEOC is currently referring employers back to its policies for the H1N1 pandemic.

Can an employer take the temperature of an employee to see if they have COVID-19?

- Under the ADA and state disability laws, taking an employee's temperature is considered to be a medical exam. Therefore, such action may be deemed unlawful if it is not job related and consistent with business necessity or necessary to protect the health and safety of the employee or others from a direct threat. The EEOC advises employers to rely on CDC guidance to determine whether the coronavirus constitutes a direct threat to health and safety under the circumstances existing at the time.

Can an employee refuse to come to work out of fear of contracting COVID-19?

- Employees can only refuse to come to work if they reasonably believe they are in imminent danger. However, an employer can have their own policies in place to allow for telecommuting or staying at home especially if the employee is a high risk. We would request you contact us to discuss such policies.

Can an employer prohibit an employee from traveling on personal time?

- No. However you can provide information on "restricted" travel and prohibit employees who traveled to high risk areas from returning to work for 14 days.

WORKERS' COMPENSATION

Is COVID-19 covered under workers' compensation?

- It depends. For a "disease" to be compensable under workers' compensation, it must be occupational in nature; such job environments as first responders or health care workers, might be covered. These claims tend to be fact specific. Remember that workers' compensation is a no-fault system. An employee attempting to get COVID-19 covered under workers' compensation must provide medical documentation to support such a claim application.

OSHA

Is COVID-19 a recordable illness?

- Possibly. It depends on whether the virus is contracted due to work requirements then results in missed time or medical treatment beyond the initial visit. OSHA has issued guidance on COVID-19 and has divided workplaces into 4 risk zones.
 - o Very High Risk – healthcare employees and/or laboratory personnel treating or collecting samples from at risk patients; employees performing autopsies on suspected patients.
 - o High Risk – healthcare workers and medical transport employees "exposed" to suspected infected patients.





- o Medium Risk – employees with high frequency contact with the general population. Examples include, schools and high-volume retail establishments.
- o Lower Risk – employees with minimal contact with the general public such as office workers.
- OSHA maintains a “general duty clause” requiring employers to provide a workplace free from recognized hazards likely to cause death or serious harm.

Do I need to pay employees who self-quarantine?

- Under the Fair Labor standards Act and most state wage/hour laws, an employer does not have to pay hourly workers who don't come to work. Exempt employees who work part of a workweek, generally have to be paid their full salaries. For either group, the employer may generally require them to use accrued PTO. However, before making any decision to pay, or not pay, we urge employers to speak with their counsel as there are other aspects that may come into play in this situation. Many states have paid sick leave laws and Congress is currently considering a federal paid sick leave law.

Is it covered under the Family Medical Leave Act?

- Possibly. Sickness due to the coronavirus is likely to be deemed a “serious health condition.” Generally an employee can not take FMLA leave to stay home to not get sick. Again, we would urge our clients to contact us prior to making a determination.

For questions or additional guidance, please contact Practice Group Manager, Doug Spiker, by email at dspiker@ralaw.com or by phone at 216.696.7125.

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